

THE 40
OFFICE
OF

A Justice of Peace.

Wherein is plainly set down their
Power and Duty, both in and out of
General and Special Sessions.

Heretofore published by *William Sheppard Esq;*
And now enlarged with sundry new Cases
and Reports concerning settling of Poor and
Bastards, and the late Acts and Ordinances
now out of use expunged.

With Forms of Proceedings and Presidents in pri-
vate Sessions concerning forcible Entries.

And also the manner of taking Examinations of
Fellons and Informations, &c.

TOGETHER

With the Resolutions of the Judges of Assize.

With an exact Table to the same.

By a lover of Justice.

Iustitia in sese virtutes continet omnes.

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THE
P R E F A C E
TO THE
R E A D E R.

Curteous Reader,



THE administrati-
on of penal Laws
by *Justices of*
Peace in every
County hath been
ever accounted a
most excellent

Constitution of Government,
whereby the King as the Fountain

The Preface

doth distribute Justice through them as so many Rivolets into all the parts of his Kingdom, for the conservation of that peace, without which all temporal enjoyments would be less comfortable to us. This Constitution then being of such excellent use to the Publick, and the execution thereof being intrusted with the persons of best quality, and of greatest eminency (and 'tis happy it is so) it being agreeable to nature that inferiour things should be governed by superiour. It therefore behoves those Gentlemen to whom so great a trust is committed, to have more than a common regard to the discharge thereof; 'tis no ordinary trust, 'tis a publick trust, and therefore the neglects or failings in it redounds to a publick disadvantage. It was the expression of sometimes a Fudge of this Realm, that one of the great sins of this Nation was Breach of publick trust.

And

to the Reader.

And truly it were happy for us, if Gentlemen would seriously consider it, and make it more their business, and be active (though not too busie) in this employment for the execution of Laws is their life: and Cic. saith, Virtutis enim laus omnis in actione consistit, and in spending some time in inhabling themselves in the study of those Laws which they themselves are to submit unto, and governe others by; For it is but reasonable, that as they are above others in their estates and fortunes, so that greater abilities, endowments and largeness of minde should likewise be expected from them, to do more good than others, to know more than others; some extraordinary knowledge herein is necessary, for a Justice of Peace is a Judge, and that upon Record, and Ignorantia in Judice equiparatur dolo, certainly no humane knowledge is more pleasant and profitable than

Justitia
differt à
jus, jus
dicitur in re
& justitia
in actu,
jus est ars
equi &
bonis ju-
stitia est
virtus tri-
buens u-
nicuique
quod su-
um est.

Ignorantia
judicis est
calamitas
innocen-
tis.

The Preface

* Justitia
est con-
stans vo-
luntas
reddens
unicuique
quod su-
um est ac-
que hu-
manam
societa-
tem equè
tuens,
Cic.7.

to know how we may * suum cuique
tribuere; and how to administer
those good and excellent Laws by,
and under which we enjoy all our
earthly contentments; besides Gentle-
men are concerned herein, for their
honours sake, for the honour of a
Gracious King who hath entrusted
them with this great Authority, these
are no small engagements to gene-
rous minde. And to the end that
Gentlemen who have not studied the
Laws may with more facility attain
unto some competent knowledge here-
in, without much troubling them-
selves with many Bookes: This
little Book, (in regard it con-
tained so much excellent matter,
and the former Impressions thereof
having been so well liked and ap-
proved of) hath been lately revised
with great care and pains, and en-
larged; and all those late reputed
Acts and Ordinances now out of
use

to the Reader.

se expunged, and divers good Cases and Reports are added in their rooms, and also several new Cases and Resolutions concerning the settling of poor people and Bastard children, divers whereof are not in any other Authour upon this subject, insomuch that few Cases can happen of that nature, but you may finde here resolved.

Here is also added the manner of holding a private Sessions, for enquiring of forcible Entryes and Detainers, with authentick Forms and Presidents for recording and certifying the same by Circiorari, or otherwise, such as are not elsewhere extant.


Whereunto is also added the Forms of Recognizances, and the manner of setting down, and taking Informations, and Examinations of Fellons, with some presidents of Indictments proper for the Sessions.

And

The Preface, &c.

And lastly, here is added an exact Table to the whole Book, whereby this small Manual intended only for the publick good may be of no small use, and I doubt not but will answer the Readers expectation accordingly, and so both deserve and finde his acceptance.

The



The whole Office of the Country Justice of Peace.

CHAP. I.

*Advice to Justices of the Peace,
drawn from experience.*

BEfore we enter into the duty and power of these Officers, we shall premise and lay down some things by way of advice, taken out of our own experience and observation, as much conducing to the furtherance of Justice, improvement of the execution of this Office, and advantage of the Commonwealth. And first generally.

The Justices must take great care in the choice of all the Officers of trust that are under them; As Church-wardens, Overseers of the poor, and the rest, but especially of the high-Constables, and petty Constables. And for this

Advice to Justices of Peace.

Chap. 1. to choose them themselves, and to find out the most pious, well-affected, discreet, publick-spirited, able and active men, and to make their election alwayes of those men.

2. It is very good to keep special Sessions often in, and about the County, and to have there a choice Jury of the most prudent, and pious men of the place, which Juries must be returned by the Sheriffs or Bayliffs, and not nominated by any other, if they be the indirements taken by them are void, Stat. 11. H. 4. cap. 9. And it is best then to give them in charge some few speciall things; As Ale-houses, persons of ill behaviour, vagrants, swearers, and the like. And it will be best to keep it only for one or two Hundreds, and not more at any one time, or in one place. And this may be held by any two Justices of the Peace; one of them being of the Quorum: And they may, if they please, call to their assistance the Clark of the Peace, who is bound, being required, to attend them. And if they please, they need not give any other charge but this, to require them of the Jury, to enquire upon the heads of the things contained in the Warrant, by which the Sessions is called: which may be after this manner.

A Warrant to the high-Constables to
call a speciall Sessions.

To the High Constable of A.

Glouc. ss. *You are hereby required, and straitly commanded, that you cause to be apprehended in all places within your Hundred, all this next Summer, all per-*

Advice to Justices of Peace.

3

Chap. 1

sons whatsoever, above seven years old, that are minstrels, Pedlers, Tinkers, Fortune-tellers, Players, Fencers, Bear-wards, and other idle persons able to work, that wander, and rogue, or beg about the Countrey, under any pretence whatsoever, and bring them before some Justice of Peace to be examined. And you are to give notice in all places within your Hundred, that there will be a Speciall Sessions of the Peace, holden for the County of Glouc. at the house of H. in Strowd, upon Monday the twentieth day of May next, by nine of the clock in the morning of that day; and that you require all the petit Constables, and Tithing-men of your Hundred, to be then, and there, with a note in writing of the names of all such persons within their Parishes and tithings, as have within seven years last had any bastard child, and not been punished for it; and of all such as are idle persons, and want means to live upon, and wil not work by order of the overseers of the poor; of all common labourers that will not work for the wages of the Countrey; of all such as are common beggars, wandring, idle, or disorderly persons; of such as do not put themselves to service, being appointed by the Justices of Peace; of such as are suspected for thevery or incontinency; of all common swearers, common drunkards, common hedg-breakers, common Alehouse haunTERS, common slanderers or libellers; of such as profane the Lords name or day, by swearing, or Sabbath-breaking; of such as run away, or threaten to run away, and leave their families to the parish; of such as are poor, and will not let their children be bound Apprentices; of such as use to sell Ale or Beer, with or without licence, and of all such as do not do their duty towards the repairing of the high waies, according

Chap. 1. d'ing to the Statute ; and also the names of all such as hinder the punishment and convey of rogues to the Justice, or to Bridewell, or the settlement of the poor. And you are also to require of the said petit Constables to warn to appear then, and there, all such persons as they think to be fit and able to informe against any such offenders ; And all petit Constables and other persons so warned in, are to appear and submit thereunto, at their perils. And that your self be then, there also, to give in a return in writing of the names of all the Parishes and petit Constables thereof, within your Hundred, and the defaults of such of them as shall not do their best to apprehend such idle and vagrant persons, and punish them according the Statutes, or have not done their duty in the convey of rogues to the house of Correction, or otherwise in the execution of their office, and hereof fail not. Given under our hands and seals this first day of May 1651.

This Warrant the Justices may make for as many, or as few of these offences as they please.

A Warrant to a Sheriff for the Summoning of a Jury.

Glouc. II. A. B. and C. D. Esquires, Justices of Peace of the County of Glouc. to the Sheriff of the said County, greeting. We command you, that you cause to come before us at the house of H. in G. the twentieth day of this present month of May, twenty four good and lawfull men of the Hundred of S. in your County [or of the Hundreds of S. and M.] for a Jury

Advice to Justices of Peace.

5

Chap. I.

Jury, to enquire then and there on the behalf of our Sovereigne Lord the King, upon certain Articles grounded upon the Statute of the fifth year of Queen Elizabeth, concerning labourers, and the Statute of the 39th of that Queen, concerning rogues and vagabonds, and other things which shall be then given them in charge, on the behalf of the said Keepers of the Liberties, against other malefactors. And that you make Proclamation in some fit places within the said Hundreds [or Hundred] that all such as will prosecute against any such persons, be then there before us ready to do it. And that you your self be then there ready with this our Precept, and the names of the *Jury* aforesaid. Witnesse our selves, the said A. B. and C. D. at S. in the County aforesaid, the first day of March 1651.

A. B.

C. D.

For the power of this special Sessions and order of proceedings therein, See it in the second book and the seventh chapter thereof : And in chapter 9, 11, 12, & 13. of that second Book,

Whereinsoever the Justices do find any defect of a law conducing to the end of punishment and reformation of any offence, it will be their wisdom (as much as may be) to supply it by an order made at their general Sessions.

They must take care to make their Sessions orders known in the County, either by posting them up all the Sessions time, or by causing them to be read or posted up in some of the great Towns of the County.

B 3

To

Advice to Justices of Peace.

Chap. 1. To have as many informers and spies to discover evil doers, and to give the informers all due encouragement, by concealing their names, and recompensing their service with a reward by the County stock. And to make and have standing orders of the Sessions for this purpose.

5.
6. To give honest and carefull officers all due encouragement, by punishing severely such as do abuse them, and take care they may be protected in the doing of their office, have their monies they lay out for their Parishes again from the parishes.

7. To have a County stock of money alwayes. And for this, to set and keep up the Rates for the Kings bench and Marshalse, the Prisoners in the Goale, and the Mariners and maimed soldiers to the highest, and see it fully collected and brought in, and carefully to husband that stock, for the profit of the County.

8. To have houses of correction, and a Goale strong and sufficient, and well provided and governed: and for this purpose, to charge the County with so much money from time to time as shall be needfull for the doing hereof. But now more particularly.

High ways. The best way we have found by our experience to haste the amendment of High wayes, is by these two means: 1. If one of the Justices of Peace view and indite one of the places thereabouts where the ways are bad, upon his own view, at the Quarter Sessions, and set a good handsom fine upon the place, for besides that this money will help to repair the way, this will stir up the neighbourhood. 2. If the Justices about a moneth after Easter, appoint a sitting of purpose,

purpose, and before this time send their Warrants to the high Constables of the places, to this purpose. 3.

To the high Constables of *S. A. B.*
and *C. D.* Esquires, two of
the Justices, &c.

We command you to send your warrants to all the petit Constables or Tithingmen, and Surveyors of the High-ways, of the severall Parishes and Tythings within your Hundred, to give them notice, that they are to appear before us the day of this Moneth, at the &c. and then, and there to bring with them a note in writing of all such Constables and Churchwardens, as have not chosen Surveyors for the High-way-work, or have not given notice of the dayes for the work, and of such Surveyors as have not seen the same done, and of all such persons as do not their work by themselves, or their Plows, according to the Laws of that Case provided. And of all such as do not dig their ditches, and cut and pare their hedges adjoyning to the high-ways; to the end, that we may proceed against them, according to the Ten.r of the same Laws. Given under, &c.

The like warrant may (if need be) be sent about *Midsummer*. We have found much successe by this Warrant, and that it hath much hastened the work. What the Justices may do hereupon out of the Quarter Sessions, either at their special Sessions, or out of any Sessions. See in the first Book, chap. 27. and the second Book, chap. 7.

Chap. I.
Ale house.

For the suppressing of Alehouses and Alehouse keepers, the root of all evil, we have but these two wayes. 1. To go Circuit the Countrey, and by the presentment of honest Juries at the special Sessions, and the return of the Constables of every place, there to have all their names that sell given in, and then to continue as many of them as shall be thought necessary. And either by the Constables, or by two men sent of purpose (which is a better way) to discharge all the rest that are supernumerary. And this being proved to be done, if they sell afterwards, to commit them to Goal for three dayes, and untill they give Bond with sureties never to sell again. But this remedy, as some of the passages hereof may be somewhat questionable, because not done by the ordinary way of Inditement, so have we not found it very successfull. We have therefore, after we had discharged them, and had proof thereof, by order of the Sessions directed to certain persons by name, ordered the commitment of these persons for their contempt. But the other way (which we take to be the best remedy for this evil) is to convict them once, and make them pay their 20s. And then to get them convicted the second time, and for this send them to Bridewell, and let them stay there their moneth, and the third time to make them stay there until the Justices may be assured they will give over.

the house.

The best way to scour and rid the Countrey of vagrants and idle persons, is by setting up certain Officers of purpose to look after them, and to arm them with such power, and give them such pay by Sessions order, as they can make

Advice to Justices of Peace.

Chap. 2.

make. And these they may call Marshals. And if these Officers do in the beginning of the Summer, out of the Fairs and such like places of meeting, take up but some of these, and carry them before a Justice of Peace, who may examine him upon the course of his life, and if he perceive him to be a vagrant or idle fellow, or find that he can give no good account of his life (as doubtless he will) then his best way will be, because one Justice alone cannot send such a person to Bridewell, to put him to give sureties for his good behaviour, and for lack thereof send him to Goale. And being there at another time by two Justices he may be turned over into the Bridewell. This course will very much cleer the County for that Summer; And this course we have found very successfull this way.

CHAP. II.

Of the Persons over whom Justices have power.

THEIR power in and out of Sessions is over all persons within their County; they have some power also one over another, for a Justice of Peace of the County, may be indicted in the quarter Sessions as another man for any offence there tryable. But one Justice cannot amerce another for absence, as the Justice of Assises may do, nor can one of them imprison another for any abuse offered to him, for *inter pares non est potestas*, Lamb. fol. 385.

Over what persons their power is to be exercised

CHAP.

CHAP. III.

Of the Place of their Power.

In what
place their
Power is to
be execu-
ted.

THe power of these Judges in the Sessions and out of the Sessions is to be exercised in their own proper County only, and not elsewhere; Therefore they are not to intermeddle in other Counties nor in any City which is a County it self, where there be special Justices of Peace for the place, nor in those places within the County where they have a Charter, and therein a speciall prohibition to the Justices of the County, that they meddle not there, and Justices are appointed for the place. And yet perhaps in this last case the Acts that such Justices do there may be good, but they may be subject to punishment for the doing thereof. But they may intermeddle in all Corporate Towns, Liberties and Franchises within the County which have return of Writs but not proper Justices of Peace. And if a place lie within two Counties, or part in one County, and part in a City, each may intermeddle with their own part; So that if a house holden by force be within two Counties; and when the Justice of Peace of one County comes, the force is removed into that part which is in the other County, he can do nothing, 14. Eliz. 5. 5. Eliz. 4. 39. Eliz. 4. 43. Eliz. 3. Dalt. I. P. fol. 27. 117. Lamb. I. B. 92.

The Justices in their County cannot punish

An offence done in another County, on a penal Law, but in some special cases where the Law gives them power so to do, as in the cases of Guns, Partridges, 1. *Jac.* 7. *Jac.* 5. *Eliz.* 4. when the Statute gives power to punish where the offender shall be taken, and 22 *H.* 8. 5. for reparation of Bridges, where a Bridge is in decay, and he that should repair it, lives out of the County, in this case they may proceed against him as if he lived in the same County; And so in some other special cases, Justices of peace living or being out of their own County, cannot there exercise any Judicial Act of their Jurisdiction, as take oathes, examination, or Recognizances, make warrants, or the like, nor can they cause offenders to be thither brought before them out of the County, but such Acts so done are void. But it is held that he may do any ministerial Act, as take the oath of one that is robbed, a Recognizance by supplicavit, or the like as well without, as within the County, and these Acts are good, so in *Hellyers Case* 7. *Car. B. R. per curiam.*

Jo. Sanders a Justice of peace of the County of *Berks* took the examination of one that was robbed at his chamber in the middle Temple, and by a report 8. *Jac.* a Justice of peace taking a Recognizance out of the County is good. The words of the Statute of *Winton* are not an exercising a Jurisdiction but a direction or a description of the person before whom the examination shall be taken which may be as well taken in any other place as in the County.

To do an act to compel another to perform, to imprison any for not performing, or to command

Chap. 3. mand one for any offence to be imprisoned, such acts cannot be done in any other place but where his jurisdiction extends. But 'tis usual for Justices of peace to take Informations out of the County, and sometimes they take Recognizance to prosecute, and such Recognizance by consent of parties binds well enough, and are usual, 1 *Crook* 153. and he may take a Recognizance in his own County with condition that the Conusor shall appear at any Gaole-delivery or other Sessions, in any other County, and certifie it into that County.

But they cannot compel any out of the County to enter into Recognizance, for they cannot use coercive power out of the County. *ibidem.*

But for the further opening hereof, and clearing this point and setting down of the law in reference to these things in general; And what Justices of the Peace of the County of *Glouc.* may do of their office within the City of *Glouc.* as things are there now by the Charter of the City of *Glouc.* these things are to be known. 1. That if a Justice of Peace of one County take a Recognizance, information upon oath against a malefactor, examination of a malefactor without oath, or make a Warrant for causes arising within his own County; This is not safe nor Warrantable, especially the two first; But if the party himself will voluntarily submit to examination without oath, the Justice may examine him as a private man, but not as a Justice of Peace by virtue of the Commission for these being matters of Jurisdiction must be exercised and done within the County. So he may

Advice to Justices of Peace.

113
Chap. 3.

day there take a voluntary oath. And such Acts of Jurisdiction so done it seems are void and *inram non Judic.* But if it were in the same County, and in a place priviledged only from the intermedling of the Justices of the County their Acts may be good as in the residue of the County though their sitting there may be a contempt as where the Sheriffe enters a Liberty without a *Non Omittas.* 2. If the Information come, and say it to be done at a place within the County in this case it seems it is good, because no averment lieth against it, the same being a Record *feri non debet, sed factum valet.* But this entry may make the Justice of Peace lyable to an action of the case by the party that is disadvantaged by such an entry. 3. The Justice of Peace of the County of *Glocester* may keep their generall or any speciall Sessions of the Peace, and all things necessarily incident thereunto they may do in any place within the City of *Glocester.* And as to their other meetings by way of preparation or advice wherein they exercise no Act of Jurisdiction but do other things, there is no question but they may do them there. And if they exercise any Act of Jurisdiction, there is not much question in it, for their Charter doth expresse it, Sessions of the Justices, or their Sessions, and especially if it have been used in the time of *Rich 3.* for as to these things, and the Sheriffs Court the power is as formerly it was when it was parcel of the County.

Resolved,
37. Eliz.

Opinion of
some Learn.
ed Lawyers.

CHAP. III.

Of the Power of Justices of the Peace
in General.

Self. 1.
What one
Justice of
Peace may
do out of
the Sessions,
and where
they must
be two or
more to do
any thing,
and of their
Power and
Office in
generall,

Self. 2.
Peace.

Warrant.

Arrest.

Good be-
haviour.

1. **A** Ny Justice of the Peace, whether he be of the Quorum or not, may do many of the works which belong to their Office as Justice of Peace; but some things cannot be done by lesse then two Justices of Peace; where power is given to two of them to do a thing, one alone cannot do it; And in some cases, and for the doing of some parts of the Office, it is requisite that one or two more be of the Quorum. But where one Justice may do a thing, there two or more may do it for it may be done by more, though it cannot be done by fewer. *Dalt J. P. 26. 273, &c.*

2. When a Statute appointeth a thing to be done by two Justices of Peace against an offender, if the offence be a misdemeanour or matter against the Peace, It is said, that upon complaint to any Justice of Peace of this offence done, he may grant his Warrant to Attach the offender, and bring him before these two Justices, or to find sureties for this appearance at the next Sessions to answer this offence. Or if he see cause, he may bind him to the good behaviour, and so to appear at the next Sessions. But he alone cannot determine the matter, *Dalt J. P. 273, &c.*

J.P. 29. Nor can he (as we conceive) Attach or bind him over till the party be indicted for the offence, unlesse it be in case where the Statute gives a speciall power to a Justice of Peace so to do.

All that Justices of Peace have power to do, regularly, it is their duty to do; and what is their duty to do, they have power to do. And for their neglect of their duty they may be punished in one way or other.

Sess. 3.

Any one Justice of the Peace, when need requireth, may take with him, or require for his assistance in the execution of any part for his office, as to apprehend Felons, keep the Peace, or the like, any number of men he shall think fit. And such as are able must obey their Commands herein, or they may be bound to the good behaviour, or fined for their disobedience. 5.

Posse Comitatus.
Sess. 4.
Felons.

Peace.

Good Behaviour.

A Justice of Peace, as touching the keeping of the peace, may do all that a Constable, or a private person may do by the Common Law. 6.

Sess. 5.
Peace.

They are in the room of the ancient Conservatores of the peace, and have the same power they had. 7.

Sess. 6.

Where a Statute doth give a power to Justices of Peace to hear and determine of any Offence in general, and saith not where, there it must be done in, and cannot be done out of one of the Sessions. But if it give them a power to make a Rate, or to do any special thing, and say not where, there they may do it in or out of either of the Sessions. 22. *H. 5. Cook 2. part of his Inst.* 703, 704.

Sess. 7.

Sessions.

Where a thing is to be done by the Justices with

Sess. 8.

Chap. 4. with the assent of others, neither of them alone can do it. Cook 2 part Instit. 704.

Sec. 9. They must, in executing of the power given to them, by Act of Parliament, be very cautious, and see that they strictly pursue it, and therefore that they heed the words of the Statutes which are penned diversly. 1. As to the persons of the Justices, some things may be done by one, some things not by lesse than two, and some things not by lesse than three Justices. And some things cannot be done by any Justices, unlesse one of them be of the Quorum. 2. They differ as to the manner of Conviction. Some of them appoint the Conviction to be by oath of witness, some by verdict, some by view or hearing, some by confession, some by examination, some by enquiry and examination: some Statutes give them power to hear and determine. And some say it shall be done in a Sessions, some in a Quarter-sessions, or in a publick, or in a general Sessions. And some say, That the Justices shall punish the offence, but do not say where, nor how, nor any thing at all for the manner of conviction; some statutes say nothing of the way or manner of doing of execution. See 14. Eliz. about the rates of the prisoners in the Goal touching the five pound forfeiture, there is no way or manner of conviction, or of the doing of execution set down. Some statutes again direct the way and manner of execution, but say nothing of the manner of conviction; as the Act of 43. Eliz. about the Kings Bench and Marshalsee money. - The forfeitures of ten shillings by the Churchwardens, and twenty shillings by the high Constable, are appointed

Of the Power of Justices of Peace.

17

Chap. 4.

to be levied by distresse and sale of goods, by warrant from the Treasurer. But it is not said, how they that offend herein shall be convicted. So the Fine to be set on the Treasurer for his default, is to be set by the Justices at their Quarter Sessions, and levied by sale of goods; but it is not said how the Treasurer shall be convicted. So the twenty shillings forfeiture to be set upon the Overseers of the poor, for their neglect; is to be levied by the subsequent Church-wardens or Overseers, by Warrant from two Justices of Peace, by distress and sale of goods; but the Statute doth not direct how the Overseer shall be convicted of his offence, whether by witness, or how else. So upon the Stat. of 43. Eliz. for Mariners and maimed Souldiers, it appointeth that the forfeiture of twenty shillings for the default of the Church-wardens and petty Constables, and forty shillings for the default of the high Constables, be levied by the Treasurers, by distress and sale of goods; but doth not say how he shall be convicted of the offence.

And it seems in these cases of the Kings-Bench, and Marshalse, and Mariners, and maimed Souldiers, the Treasurers may levy the forfeitures and summes of Money in Arrear without any conviction, for there needs no proof here; if he receive not the Money, the offence is certain to him: And then, *Quid constat clare, non debet verificari*. Yet it is best to let the parties be indicted, and so convicted in the ordinary way before they make a distress. For this doubtless, in all the other, and such like cases where the matter of fact is doubtful, is to be

See, 10.
Money for
Marshalse,
maimed
Soldiers,
Mariners.

Chap. 4. done before execution can be made by distress and sale of goods. 3. The statutes differ also in their penning, as to the persons by whom the distresse is to be made: for some of them direct, that the Warrant shall be directed by the Justices of the Peace to the Constables, some of them to the Church-wardens, some of them to the Constables and the Church-wardens, some of them to the Constables or Church-wardens, some of them to others, some to no person at all. 4. and lastly, They differ as to the manner of the Warrant: for some of them direct it to be done by Warrant only, and do not say in Writing, others by Warrant in Writing, others by Warrant under the hands of the Justices, and others by warrant under the hands and seals of the Justices. In all these cases the words of the statute are to be heeded, and they giving a power and authority onely, it must be strictly pursued. See the Acts of the Parliament about Ale-houses, Act of the 1st Car. 1. 3 Car. 1. and see chap. 49. of the first book.

Se^{ct}. 11.
Punishment
for want of
distress.

Where a statute gives to the Justices of Peace a power, for lack of distress, to inflict a corporal punishment, this lack of distresse (it seems) must be taken for lack of distresse in the place where the distresse may be taken, and where the Officer that is to take it, hath power. As if a Justice send his Warrant to the Constable of A. to levy money by distresse and sale of the goods of H. in dale, and he be a stranger and hath no goods there, but hath enough in other places; in this case he is to be dealt with as a man that hath no distresse at all. And it is

good to consider whether to put the clause for the inflicting of corporal punishment in case of lack of distresse in the first warrant, and leave it to the Officer, or to wait the Officers return, and then to give the warrant for the corporal punishment. The best way in this is well to weigh and mark the manner of penning the statute in that part, and strictly to follow the words of the statute therein.

The Justices upon conviction for swearing, *Sect. 12.* or any other offence, may not order lesse to be taken then the forfeiture appointed by the law. *Ref. Judges 1633. Sect. 10.* See more of this in the second book, chap. 7. and first book, chap. 50.

CHAP. V.

Of the Lords Day, and Profanation thereof.

FOr the better understanding of the Law *Sect. 1.* herein, these things are to be known. 1. This day is by every one to be sanctified and kept holy: And men must be carefull herein, to exercise themselves in the duties of piety and true religion publickly, and every one on this day (not having a reasonable excuse) must diligently resort to some publick place where the service of God is exercised, or must be present at some other place, in the practice of some religious duty, either of prayer, preaching, reading, or expounding the Scriptures, or conference upon the same. 2. None may on this

Chap. 5.

Sports.

21 22

Carrier.

Resol.

Judges.

1633.

1 Sess. 16.

Butcher.

Sess. 2.

day meet out of their own parish at any sports whatsoever; nor may they meet within their own parish for bear-baiting, bull-baiting, interludes, common plays, and other unlawful exercises; no meeting or concourse of people out of their parish on the Lords Day for any sports or pastimes whatsoever, nor bear-baiting, bull-baiting, common plays, or other unlawful exercises be used by any person within their own parishes, under pain to forfeit three shillings four pence for every offence, to be levied by distresse and sale of goods, and for lack of distresse to sit three hours in the stocks. 3. No carrier may go with his horses, wagoner, carter, or wainman, may go with his cart, wagon, or wain; or drover with his cartel, on this day under pain to forfeit twenty shillings for every offence, to be levied by distresse and sale of his goods, if he be questioned within six weeks after the offence done. But there shall be but one twenty shillings forfeited for one journey, although he passe through twenty parishes, and the twenty shillings that parish shall have, where the distresse is first taken. 4. No butcher may kill or sell any victuals on this day, under pain to forfeit six shillings eight pence, if it be questioned within six weeks after the offence done, to be levied by distresse and sale of goods.

Any one Justice of Peace may, and must, upon view, confession, or oath of one witness, give a warrant under his hand and seal to the Constables or Church-wardens of the place or places where the offence is done, to levy by distresse and sale of goods the 3 s. 4 d. upon, and for lack of distresse to put in the stocks three

hou

hours, such as have been at, or used any unlawful sports or pastimes in their own or any other parish. So one Justice may after such a conviction give a warrant under his hand and seal to the Constables and Church-wardens of the place where the offence is done; and for lack of distresse, to set him in the stocks three hours, that hath kept, used, or been present at any unlawful sports, against the same second clause of this chapter. 2. Any one Justice may, and must upon confession, view, or oath of two witnesses, within six weeks after the offence done, give a warrant to the Constables or church-wardens of the place where the offence is done, to levy by distresse and sale of goods the 20 s. forfeiture upon carriers, wain-men, drovers, and such like offenders, against the third clause of this chapter before; and the 6 s. 8 d. forfeiture upon Butcher, for killing or selling meat, against the third clause of this chapter. 3. They are also to take a strict account of the observation of these things every moneth. Stat. 1 Car. I. 3 Car. I.

CHAP. VI.

Swearing or Cursing.

IF any shall swear or curse within the hearing of a Justice of peace, or shall be convicted thereof by his own confession, or upon evidence of two witnesses upon oath, before the same Justice, they shall forfeit 12 d. to the use of the poor, where the offence shall be committed,

Chap. 7.

ted, to be levied by the Constable, Church-warden and Overseers, &c. (upon warrant from such Justice) by distresse and sale of goods, and for want of distresse, (if the offender be above the age of 12 years) he shall upon warrant, as aforesaid, be set in the stocks three hours; but if under, then he shall be whipt by the Constable, or by the parent or master in the Constables presence.

And if an Officer be sued herein for the due execution of his office, he may pleade the general issue.

This offence must be proved within twenty days after the commitment, and this Act to be read in every Church twice in the year, upon Sunday after Evening prayer. *Stat. 21. Jac. cap. 20.*

CHAP. VII.

Of Disturbing a Minister.

The Office
and power
of the Ju-
stices herein
out of Ses-
sions.

ANy Justice of Peace, upon complaint, may commit to safe custody for six dayes, him that maliciously disturbeth a Minister in doing Divine Service; him that shall procure this disturbance, and him that shall rescue such a Disturber, being apprehended. But there must be two Justices of Peace to joyn in the examination of the offence, and they must doe it within the six days. And these upon the parties confession, or oath of two Witnesses, may commit him to Gaol for three moneths, and till the next Quarter-Sessions, 1 *M. Sess. 2. chap. 3.*
But

But some doubt of the continuance of this Law, Chap. 8. and think it to be repealed by 1 Eliz. 21. The better opinion is, that it is in force, and doth continue.

CHAP. VIII.

Of Depravers of the Sacrament.

THERE must be three Justices of Peace, *Quorum unus*, to take Information upon the oath of two persons, against him that doth deprave, or speak unreverently of the Sacrament of the Lords Supper. And to bail the offender: and to binde the Accuser and Witnessse in five pounds apiece to give evidence at the day of Trial. And this it seems they may do out of Sessions, 1 Edv. 6.1. 1 Eliz. 1. Dal. I.P.49.

The duty and power of Justice of peace herein out of Sessions Bayl.

CHAP. IX.

Of Popish Priests, and other Papists and Recusants.

IF any *Agnus Dei* be discovered to the Justice of Peace, he must acquaint one of the Privy Council with it within fourteen dayes, *Sub Pœna Premunire.* 13 El.2.

The power and duty of the Justices of peace herein out of Sessions.

If any Jesuite or Priest be made known to him, he must acquaint one of the Privy Council with it within twenty and eight dayes.

Chap. 9. dayes, *Sub pena* 200 Marks. 27. *El.* 2.

Feme-Co-
vert.

Abjuration.
Q. Sessions.

Masse.

Certificat.
Two Justices.

Jesuite.
Commit-
ment.
Bail.
Oath.

Popish
Books.

Recusant.

And one Justice of Peace may require a Popish Recusant, within three moneths after his conviction, to submit and declare his conformity to the laws of Recusants; and in case he do not, he may (if it be not a *Feme Covert*) require him to abjure the Realm: but the Abjuration must be at the Quarter Sessions, 35 *Eliz.* 1. 21 *Jac.* 28.

Yet a popish Recusant may abjure before two justices of peace by 35 *Elizabeth* 2. So the justice may within three dayes after the thing done, take Information of *masse* said, 3 *Jac.* 5.

But there must be two Justices of peace to require a popish Recusant above sixteen years old, which shall travell above five miles from his dwelling without licence, if he have lesse then twenty marks free hold *per annum*, or forty pounds in goods, to conform in three moneths, or else abjure. And this he must certify to the Assizes, 35 *Eli.* So that there must be two Justices of peace to do these things following, *viz.* To examine one suspected to be a Jesuit or priest that refuserh to answer directly, and to commit him to Gaol without bail till he do so, 35 *El.* 2. To give an oath to a Recusant licenced by him and three others, to travell, 3 *Jac.* 5. To search their houses, who, or whose Wives are Recusants, for Popish Books and Reliques, and burn them, or if they be of value, deface and restore them; To take the submission of one reconciled to the Pope, within six days after his return, 3 *Jac.* 4. And there must be two Justices, *Quorum unus*, to commit to prison

on a *Feme Covert* Recusant, not conforming in three moneths, unless her Husband will pay ten pounds a moneth, or the third part of his lands, 7 Jac.6. See more in *Dalt. J.P.* 130, 131, 132. &c. *Stat.* 35. *El.* 2.27. *El.* 2.

CHAP. X.

Observations in Examination of Felony and Felons.

IN all Cases of Felony done, whether it be greater or lesser Felony, any one Iustice of peace may 1. cause Hue and cry, Search and fresh suit to be made for the Felon by all Sheriffs, and other officers, and others. 1. & 2.P. & M.c.13. 1. & 2. *Phil.& Mar. Cap.* 10. *Dalt. J.P. Cap.* 20. 2. Cause to be arrested and imprisoned such as are suspicious. *ib.* 3. Examine them (when they are brought before them) and the witnesses against them, and thereby inform himself of the fact and circumstances thereof. As, 1. The party offending is to be examined without oath. 2. The party offended, robbed, &c. and witnesses, are to be examined upon oath. And he must ask the party robbed if he know the thief. For without oath they are not to be given in evidence. And although any man, how mean soever, may be allowed as a competent witness, yet some heed is to be given to the witnesses, according to the old verses :

*Conditio, sexus, aetas, discretio, fama,
Et fortuna, fides in testibus ipsa requires.*

Sect. 1.
The power and duty of Iustices of Peace here in out of Sessions.
Hue and cry. Search.
Sect. 2.
Arrest.
Sect. 3.
Examine.

Cha. 10.

3. In the examination of the witnesses against offenders, and of offenders themselves, the things are considerable, and accordingly a question to be made to discover the causes of suspicion. 1. Of the name of the person suspected if he have not two names, or do not use to change his name. 2. His quality. And because of 1. His parentage, what they were. 2. His ability of body; if he be likely to do such a thing. 3. His nature; if it be inclinable to such a thing. 4. His estate; if he have an estate, or be needy. 5. His life; if idle, drunken, &c. if he ever did any such thing before. 6. His company; if it be suspicious. 7. His repute; if of evil or good name. 3. Of the Marks or Signes. 1. If any blood be found on him, or about him; any of the goods, if it be goods stolen, or any of the goods of the man slain be found with him. 2. If he blush, or change his countenance, look downwards, is silent, or trembleth when he is examined. 3. If his answers be false, doubtful, repugnant, or idle. 4. if he hath offered an agreement, desired his neighbors not to speak of it. 5. The measure of his, or his horses foot. 6. The bleeding of the dead body in his presence. 7. If he fly, or lie hid, and obscure. 8. If he be the first that doth finde the party murdered, and some other suspicious signes accompany it. 4. Of the time and place, when and where it was done, and where the person suspected then was. And of these and other circumstances, the examination is to be made. *Dast. Inst. of P.* 373. 5. It is good to let the witnesses subscribe their names to the Examinations. 6. The Examination of one not able to come to

the

the Assizes, may be taken by a Justice of peace, and certified thither, 27. Elix. 13. *Dalt. I. P.* 48. 7. He that confesseth a Felony, may accuse others thereof; *Dalt. Inst. P. in cap. 3.*

4. Within two dayes after the Examination taken, he must put so much of the same as is material to prove the Felony, into writing. 5. Certifie it with the Recognizances for bail and prosecution, to the next Goale-delivery, or Quarter-Sessions, as the case is: wherein these things are to be known. 1. If it be a greater Felony to be determined at the Goal delivery, then it must be certified thither. 2. If it be a Petit Larceny, or other small offence, he may binde over the Informer, and certifie the Examination to the Quarter Sessions, where the Iustices may, and ought to determine it. 3. If it be a greater Felony, which they have power there to undermine, it may be certified thither also. 4. The whole case is to be certified, as well that which may clear, as that which may accuse him, *Dalt. 7. P. fol. 63, 64. Cap. 3. fol. 411.* Yet it is held that a Justice of peace regularly is not to record (and then to certifie) the evidence that is given against the Keepers of the Liberty; *Dalt. I. P. in Cap. 123.* 5. Examinations taken by Justices of peace in one County, may be certified and used in another County, *Dalt. 7. P. fol. 370.*

7. Either he must bail the Felon, if he be bailable. But 1. To bail a Felon, there must be two Justices of peace, *Quorum unus*, present to do it. 2. Then it must be certified with the Examinations.

8. Or if not, he must send him with a *Mitti-*

-mus

Cha. 10. *mus* to Gaol, *ib.* The next thing here to do
 9. To binde over the party abused, robbed, or
 or Informer, to prosecute effectually, and wit-
Stat. 34. p. nesses that can say any thing material, to the
& m. c. 10. Gaol-delivery (as the case is) to prosecute and
& 1. & 2. give evidence; and the Party grieved it is be-
p. & m. to binde to prefer a bill of Indictment, as well
c. 13. as to give evidence. 1. This bond must be all
Certificate. certified with the Examinations and bailbonds
 if there be any, to the Gaol-delivery. 2. If the
 party robbed, &c. refuse to be bound, he cannot
 recover of the Hundred. 3. If any material wit-
 nesse refuse (being required by the Iustice) to
 be bound to give evidence, he may binde him
 to the good behaviour, and for want of surer-
 ties send him to Gaol. But if he can give no materi-
 al evidence, *contra*. 10. If the case be Homicide
se defendendo, or by an Infant, or the like, or
 the Iustice of peace have no evidence against
 the Felon, or the witnesses be suspicious, or the
 like; Yet if there be a Felony committed, and
 the Party be at all suspicious, he may examine
 him, and shall do well to binde him over; for
 though the case be never so clear for matter of
 fact, yet it seems not safe for a Iustice of peace
 to discharge him without bail, for happily more
 Evidence may come in; his best way will be
 therefore to get him bailed, and make the case
 known to the Iudges. But if the case be clear in
 point of Law, as where the Felony charged up-
 on him is for stealing a Grey-hound, or the like,
 which is no Felony, there happily the Iustice
 may discharge him, and not binde him over,
Dalt. I. P. fol. 367, 368.

Sp. 9. 11. It is doubted (however the practice be) that

that a Iustice of peace cannot iustifie, upon a bare surmise, without oath, except it be where one Felon doth accuse another before an Indictment be found, to arrest a man for Felony, or break any mans house to search for a Felon, or stollen Goods. And it hath been said that after the Indictment, it must be in open court, for it is in the nature of a *Capias*. But the contrary is practised at this day. And this he may do, when any man is charged, and the Iustice hath taken examination, he may grant his Warrant to the Constable of the place to see the Kings Peace kept, in the taking and bringing of the Offender before him, and then the party that giveth the information, and doth suspect, he is to arrest the Offender; which done, he may either carry him to a Iustice of peace, or Constable, or to Gaol at his choice, *Cook 4. Part of his Inst. fol 177.* or he may send Warrants to search or arrest. For this seems necessary at this day; for Constables are so ignorant and fearful, that they dare not do any thing without the Iustices warrant. Besides, when the Iustice of peace hath information upon oath before him, he hath good cause to suspect, and so may proceed upon his own suspicion, *Dalt. I. P. 4. 376, 408, 374* And however, the Officer upon the Iustice of peace warrant is excused.

Arrest.
Search.

Sess. 10.

12. The Iustices of peace cannot (out of Sessions) punish Petit Larceny by their discretion (as some have thought) but must bind the offender over, and they must be tried and quitted at Sessions, *Dalt. I. P. in Chap. 101.* What is Felony, see in the Sessions charge.

Sess. 11.

Petit Lar.

ceny.

Bind over,
Sessions.

CHAP. XI.

*Of the Peace.**Sect. 1.*

FOR the opening of this point, these things must be known. 1. The Peace is a quiet friendly, and harmless behaviour towards the Kings Majesty and all his liege people, which is required of all. 2. He that breaketh this, breaketh the peace. But most properly he that offereth any actual or injurious force is said to break the peace. 3. All men are bound to endeavour to keep it between others, and to suppress the breach of it. 4. Divers Officers have an especial charge annexed to their Office to look to it.

Sect. 2.

The power
and duty of
the Justice
of peace
herein out
of Sessions.
Arrest.

The Iustices of peace have power to prevent offences against the Peace before they are done, and to punish them after they are done. For they are to see the peace kept, and for that purpose to see the Laws made for the preservation thereof executed, require Sureties where they fear it, pacifie such as begin to break the peace, arrest affrayers, &c. such as break the peace before them, or upon themselves, or others and send them to Gaol, unless they give Sureties to keep the peace, which they may require of them. And if any one be dangerously hurt in the affray, send him to prison that did it. And 1. All this any one Iustice of peace may do. 2. Whatsoever any other private man, or Officer may do for the keeping of the Peace, a Iustice of peace may much more do, *Dalt. I.P.* 4.41, 42. 3. Any Iustice of peace that hath any

Commit-
ment.

Sect. 3.

cause

Of Watch and Ward.

31

Cha. 12.

use to suspect the breach of the peace in any place, may send his Warrant to the Officers, or others, there to take care to prevent it, *Cook* 4. Part of his *Inst.* 177. 14 *H.* 8. 16. 4. Any one Justice of peace may take away the Armes, and imprison such as he seeth to be riotously assembled, or go armed, that wear coats of Mail secretly, or carry Dags or Pistols; or he may inquire and prize the armour by a Jury, *Cook* 71. *Dalt. I. P.* in *Cap.* 9. So he may command the arms to be taken from such prisoners as are taken and brought before him, *Dalt. P.* f. 42, 43.

Sect. 4.
Commitment.

Armour.

CHAP. XII.

Of Watch and Ward.

IN these things are to be known, 1. None but Inhabitants of the same Town are compellable to watch or ward. 2. It must be by men of discretion, able bodies and sufficiently armed. 3. It must be by turn, or by the house; according to the custome and use of the place. 4. The Constable *ex officio* is to order it, and he may enlarge it as there is occasion, but he cannot change the course of it at his pleasure, and make some watch, and excuse others. 5. If any neglect or refuse to do his duty, the Constable may present this default at the Assizes or Sessions, or complain of it to a Justice of peace. And some hold, the Constable may put him in the Stocks for his contempt. 6. This Watch

Sect. 1.

Constable.

Stocks.

Cha. 12. from *Ascension* to *Michaelmas*, and must be from Sun to Sun; and the Warding then (in congruity of Reason) must be the rest of the twenty and four hours of the day. 7. These Ward and Ward-men are to pose all men, to arm and secure till morning Rogues and others suspicious, and them to bring to a Justice of peace to be examined, *Dalt. I. P. Cha. 60. Winch. Ed. 1. 4. 3 Ed. 3. 14.* Or if they will, they may deliver them to the Constable, who must take care of them. And if any resist them, and away, they may send Hue and cry after them and upon this any man may arrest them. 8. For default of this watch and ward, the Townsham may be punished,

Sett. 2.
The power
and duty of
the Justices
of peace
herein out
of Sessions.

Any one Justice of peace may set this watch between *Ascension* and *Michaelmas* for the arresting of suspicious persons, *Winch. 13. Ed. 1.* and he may direct the manner of it. Also he may, if he see cause, appoint Warding by day for the apprehending of Rogues, *Resol. of the Judges, temp. Car. 1633.* And it seems reasonable then, that if Officers or others neglect it, that the Justices may require a conformity; and if they refuse, or neglect, may binde the offenders to the good behaviour at the least, otherwise the service will not be enforced.

CHAP. XIII.

Of Night-walkers.

ANy one Iustice of peace may cause such persons, strangers or others, that are suspicious, that sleep by day, and walk by night, especially if they haunt lewd houses, or keep lewd company, or commit out-rages; to be arrested, and force them to give Surety for their good behaviour. 13 H. 7. 10. *Dalt. I. P. in Ch. 35.*

The power and duty of the Iustices of peace herein out of Sessions. Arrest. Good behaviour.

CHAP. XIV.

*Of Forcible Entry, &c.
Unlawful Assemblies, &c.*

IT is an offence by which unlawful violence is used to persons or things: and this is either implied, as in every Trespass, *Rescous* and *Disseisin*, there is a Force implied in Law, or it is actual with Weapons, number of persons, &c. which alwaies carrieth some fearful shew or matter of terrour with it. The actual Force also is either simple, when it is joyned with no other crime, as entry into lands only; or compound, when it is mixt with some other Fact, which of it self is criminal. As if any by force enter into anothers possession, and kill a man, or ravish a woman there, &c.

Self. I.
Force.

Cha. 14.

Sect. 2.

Forcible
entry.

A forcible entry is a violent and actual entry into any lands, houses, &c, or taking of any distresse by any person weaponed, whether he offer violence, or fear of hurt to any there, or furiously drive out any out of the possession thereof. And sometimes it is taken for a Writ grounded upon the Statute.

Sect. 3.

Forcible
detrainer.

A forcible Detainer is a violent act of resistance by a strong hand, of men weaponed with harnesse, or other action of fear, in the same place, or elsewhere, by which the lawfull entry of Iustices or others is barred or hindered.

What shall
be said, to
be a forcible
entry
into, or
holding of
Lands,

The Statutes of 5.R. 2.7. 15.R. 2.2.8. H.6.9. give charge, that none shall enter into any Lands, but where entry is given them by Law, and then in a milde and a peaceable manner. And that none shall enter into, or hold a possession of Lands with a strong hand, and with force. For the opening whereof we must know,

What persons may
commit this
offence.

1. That one or more may commit this offence.
2. An Infant or a *Feme Covert*, by their own act may commit a forcible entry or detainer: But they cannot do it by commandment as another man may do.
3. Where divers do come in a company to do this act, and one of them only doth use the violence, they are all guilty. But herein we must take this difference, where divers come together in one place to do an unlawful thing, and one only doth it, and the rest stand by, and do nothing; in this case they are all guilty as principall doers, and the act of one shall be said to be the act of all. So that if divers come to enter into Lands, where their entry is not lawful, and all of them but one do enter

Coming to
do a lawful
act or un-
lawful act
the diver-
sity.

enter and demean themselvks peaceably, and
he only doth enter with force, and after entry
doth hold with violence; this, albeit it be
against their wils, is a forcible entry. And so it
seemeth to be, where some of them do come
without an evil intent, if they come together,
or if they come after, and be aiding and coun-
tenancing to the Offenders. But when divers
come together to do a lawful Act, as to distrain
for Rent due, or the like; and in that case,
some of them, without any intent before, or al-
lowance or countenance then by the rest, espe-
cially if they discountenance it, fall to out-
rage, and commit this or the like offence; in this
case it seems the rest are not guilty. 4. A man
shall not be guilty of this offence by any coun-
sel or command before, or agreement after, un-
lesse he be present at the act done. But for
further opening hereof, take these things. 1. If
a master come with his servants, his servants
knowing nothing of it, and he enter with force;
his servants shall not be said to be guilty. 2. If
a man enter with force to the use of another
person that is not present, or by commandment
of another not present, who agreeth to it: yet
he is not punishable for this force. 3. If many
come together, and some of them do only en-
ter by force, and the rest keep it by force, they
are all alike guilty, both the forcible entry, and
detrainer. 5. Though the King, or his Tenant
could not be outed of their possession, yet this
offence may be committed in this Land, and
then is punishable as in other cases. 6. Though
he get no possession hereby, yet it may be this
offence, and punishable. 7. This offence may

Cha. 14. be committed about a rent, when one doth distrain with force, be the rent due or not, when one is coming to distrain, and the Tenant doth threaten to kill, or forcibly resist him, forestall the way, or rescue the distress, or the like; so about a Common, as when one doth forcibly keep his Cattel where he hath no Common, or forcibly resist another man that hath Common. 8. The express force is that which is forbidden, when it is either with multitude, i. a greater company then such persons have usually attending on them: yet one or two, if they be armed, &c. may commit this offence. Or it is with strong hand (that is) with apparent violence: In word, by threatening speeches, as to say, they will keep the possession if it cost them their lives, or in spite of the other being in with him; or if he threaten to kill or hurt the body of him that is in, if he will not go out; or out, if he offer to come in; especially if this make them to go out, or keep off. Or deed; by turbulent behaviour, or actual violence offered to the person of another? or else that they be furnished with some Weapons by them not usually born, as Swords, Bucklers, Pikes, Javelins, Bills, Clubs, Pitch-forks, Staves, Halberts, Bows and Arrows, Cross-bows, Guns, Harness, Armour, or the like: or by casting of stones, blocks, pouring of hot coals, scalding water, or lead, or with any other thing where-with one may hurt the person of another; and therefore if any enter thus, though no man oppose them, this is a Forcible entry; much more, if being entred they there offer any violence, or fear of hurt to the person of another that is in possession.

possession with him; and most of all, if he shall furiously and forcibly expell and drive another out of the possession: for if one enter in at the door, being open, peaceably, but then he doth forcibly put out them that he findes in possession, this is a Forcible Entry. If a man have a force laid in another house by the place, this may make him guilty of this offence of Forcible Detainer. So if a man after his peaceable Entry get more Weapons into the house than were there, or usually he doth bear, or if he make use of the weapons in the house, to defend his possession: but the having of them there, if they were there before, is not a force punishable. 9. If any Iustice of peace come to view the force in a house, and they refuse to let him in, this of it self is a forcible detainer in all cases, though it be but by one person, and no weapon shewed. But if a Iustice of peace come not there upon complaint, and of purpose, but by accident, or to other ends, and the parties refuse to let him in; this is no forcible detainer. So neither if he refuse to open the door to his adversary, or to any other besides the Iustice of peace. So if he finde any multitude of persons, arms, or the like. So if the Disseisor stalleth the way of the Disseised with force, that he dare not come near: But do refuse to open the doors to the other party, is no forcible detainer. And if I be in possession of a house, and another that hath more right, would enter, I may keep him out with my ordinary company and weapons, but not otherwise, for fear of the guilt of a Forcible detainer. But if my estate and possession be lawfull, and I or

Cha. 14. my Ancestors have peaceably enjoyed it for three years together before the Indictment brought, if so my entry were peaceable, not forcible, and I have continued three years possession peaceably and without force, I am in possession by right, and of a lawful estate, and not by wrong; and I have continued this possession all these three years without interruption, and not discontinued, and my estate is not ended; in these cases, it seems, I may keep my possession with force, and this is no forcible Detainer, which by plea to the Indictment will avoid Fine, Imprisonment, and Restitution. But to threaten a man, that if he come to enter, he will burn his house, or spoil his goods therein: To cut trees upon the Land, or carry goods out of the house after a man hath entered the door being open, or only latched, to enter without multitude or offensive weapons: So by fair means to perswade or intice any body out of the house, or by that means to keep them out; to take a man being out of the place and imprison him, and in the mean while to send one to enter into the Land or House, or to deny to go out, and by Imprisonment keep him out; these things will not make a forcible entry or detainer; and therefore if in these cases the other side make a forcible entry upon them, they may be put out again. 10. Though the party ousted be dead, that no restitution can be made, yet the forcible entry shall be punished. 11. If one enter into a house or land with an intent to cut or carry away his goods or corn, &c, or the like trespass, though he do

not put him hereby out of possession ; this will be a forcible entry punishable by these statutes, if it be with strong hand, or with multitude. 12. So if any enter peaceably, and after entry, by force do any such act. 13. To detain a house Mortgaged by force from the Mortgager, is a forcible detainer. 14. To go over the land with force or multitude to another place or end, is not a forcible entry. Nor is the force that is used with the Warrant; and in the maintenance of the law, any offence within these Statutes, but lawfull : So is the force used in the apprehending of Felons, by Sheriffs and other Officers, in executing Writs, and in doing their office, in keeping the Peace, in defence of my person and house, and the like. But for the further opening hereof these cases must be heeded. If two or more men be in harness, having also in their hands divers weapons, and they enter into the house of another, to have the possession thereof without more doing, and hereupon the other party that was in possession departeth and goeth far off; this is a forcible entry. But if two men in that manner break in the house, the door being open, and it is not known to what intent, the Tenants being in quiet, and no violence is used to them, but they that keep the possession run away; this is no forcible entry. If a man have two houses near adjoining, the one by a defeasible Title, the other by a good Title, and he keepeth a force in the house he hath by a good Title, to keep out of the other house; this is a forcible detainer. If a man putteth another out of his house by force, leaveth it, and putteth in one of his servants in a peace-

Detainer
with force,

Cha. 14. able manner, and keepeth the party put out in prison, this is not a forcible detaining, though it be a forcible entry. If one sole person alone break the house of another, and enter in by the windows against the will of the owner, and then threatneth the party, and he for fear doth forsake the house; this is a forcible entry.

If a forcible entry be made into the house of another, with intent to fight with the party there dwelling, and thereupon the party in possession, and they that enter upon him, do all depart out of the house, this is no forcible entry. So if one enter a house to seize a ward, and is kept out by force, this is no forcible detainer. So if a lesser enter with force to see if any waste be done by the lessee, this is no entry by force, although he remain there a whole day and night after. So to enter a house in time of War to fortifie it against enemies, is no forcible entry.

So if the Lord dilstrain for Rent, where no Rent is due, and he do it with force, this is no forcible entry. So if one break and enter the house to part an affray there, or to apprehend a felon, or one that hath dangerously hurt another, and is escaped and fled into the house; But if the man that is hurt be in no danger, it is otherwise. So if a Gaoler bring his prisoners into the house, being his own house for safe keeping, and keep a guard about them, this is neither forcible entry nor forcible detainer.

If I hear that certain fellows will come to my house, to bear, rob, or kill me, and I take in

in force to defend my self, this is no forcible detainer. But if I hear they are coming to take possession, and I gather force to keep my possession; this is a forcible detainer.

If one enter forcibly in a house upon another, and imprison in the same house him that was in first, and himself remaineth there with force, this is a forcible detaining. If a man claimeth common to Land, or a Rent out of it, and the Land is detained with force that he cannot use his common, or have his Rent by distresse, this is a detainer with force. But if one have a Warren in anothers Land, and the land is detained with force when he would use his Warren. Or one doth enter into the Park of another to distrain his game, and the owner of the Park do keep him out by force, this is no detainer by force.

If a man make a lease for life, and after grant the Reversion to the same lessee upon condition on the part of the lessee, which condition is broken, and the lessor doth enter with force to get the possession of the Land; this is a forcible entry. So if the lessee doth alien in Fee, and thereby forfeit the Land, and the lessor die before his entry, and then his son and heir enter upon the lessee with force, this shall be a forcible entry. All these cases are in *Master Risdens Reading. Dalt J. P. cap. 22. 76. Poulton de pace. 34, 35, &c. Cook 8. 120.*

The Party grieved by a forcible Entry or *Self. 5.* Detainer, may be relieved, and the offender *Remedy.* punished divers wayes (amongst others) by the help of the Justices of the peace, who may do it upon the Statute of *Northampton*, which is in

Cha. 14. in the nature of a Commission, wherein they proceed as Ministers onely, or by Indictment upon 8. H. 6s at the Quarter Sessions, which being found there, the party shall be restored to his possession by a Writ of Restitution from the Court to the Sheriff, *Dier. 187. Crompt. J. P. 165.* But the most speedy and common remedy is, by complaint to one or more Justices of peace, who may thereupon go to the place where the Force is, and if it be in an house, he may enter and search, and if any force of Armour or Weapon be worn or born against this Statute, and if any such offenders be found, he may commit them to prison, and may seize, and prise the armour so found with them; and he ought to record all that which he shall do in this behalf, and thereout to send some Estreat into the Exchequer, that the Common-wealth may be answered of the Armour or of the value thereof. But here again, the Justice must not make any Restitution to the party outed, but must only remove the force, And concerning the offenders so found and committed by the said Justice of peace: It seemeth the Justice (at his discretion may fine them, and upon payment thereof, or Sureties found for the same, the said Justice may deliver the offenders, even as in the former Statutes of 15. R. 2. & 8. H. 6. Or else the said Justice may record such force, and commit the offenders, and after certifie the Record in the upper Bench, or to the Justices of the Gaol-delivery, or to the general Sessions of the Peace; or else the same Justice or Justices of the peace may proceed otherwise: for every Justice of peace upon complaint to him

made,

View.

Commitment.

Record.

Restitution:

Fine.

Certificate.

made, or upon other notice to him given of any Forcible Entry into, or holding, or Detainer of Possession of any Lands, Tenements, or other possessions (or of any Benefices or offices of the Church) contrary to these Statutes, by the party grieved without any examining, questioning, or standing upon the right, or Title of either party, may and ought in convenient time (at the cost of the party grieved) to do execution of the Statutes aforesaid. And as to the Justices duty and power in relation to the aid he may require, removing the force, imprisonment of the parties, and making record of the force, these things are to be known. 1. He ought to go to the place where such force shall be, to view it. 2. He may command and take with him sufficient power of the County, or Town by his discretion, and the Sheriffe also, if need be, to aid him, for the better execution of his businesse, as well for the arresting of such offenders, as also for removing of the Force, and for the conveying of them to the next Gaol. And as to this, these things must be known. 1. If he require any mankinde, be they Dukes, Earls, Barons, Lords, or men of lower degree, apprentices, servants, and others, that are not about the apprehending of Felons, or some other public service. But women and children under fourteen years old, Aliens that are no Denizens, men that are not *compos mentis*, and prisoners are not bound. 2. These he may require by word of mouth without a Warrant in writing. But so can none other officer. 3. He may arrest or imprison and fine such as refuse to aid him. 3. He ought to arrest and remove all such

View.

Arrest.

Cha. I+. offenders, as at his coming he shall see or find continuing the Force, and may take away their Weapons, Harness, and Armour, and presently cause them to be preised, and after to be answered to the Common-wealth as forfeited, or the value thereof. And if the doors be shut, and they within the house shall deny the Justice to enter, it seemeth he may break open the House to remove the Force. But if such offenders being in the house at the coming of the Justice, shall make no resistance, nor make shew of any force, but set open his doors to the Justice, then the Justice cannot arrest or remove them, except upon the enquiry a Force be found. And if the house or land which is holden with force, shall extend into two Counties, and the offenders move their force into that part of the house or land, which is in the other County, when the Justice doth come, it is said by some he cannot then remove the force, but others hold the contrary. 4. He ought to make a Record of such Force by him viewed: wherein are these things to be known. 1. If the Justice come to remove the Force, and the offenders escape before they can be arrested, yet the Justice must record the forcible detainer. 2. If the Justice be put out of the Commission, or made Sheriffe before he come to the place, he cannot then record it. 3. If the Justice Record a force and send to prison where no force is, the party is remediless. 4. If a rescue be made of the prisoners committed by them, they may Record this also. But if he Record a murder, or man-slaughter, this is void. This Record shall be a sufficient conviction of the offenders.

Armour.

Record,

offenders, and the parties shall not be allowed to traverse it. 5. And this Record (made out of Sessions by a particular Justice) the same Justice may keep by him, or he may make it indented, and certify the one part into the Upper Bench, or he may leave it with the Clerk of the Peace, and the other part he may keep himself. 5. He ought to commit immediately to the next Gaol, all such persons as he shall finde and see continuing the Force at his coming to the place, the said offenders there to remain convict by his own eye, testimony, and record, until they have paid a Fine to the King. For this sight and view of the Force by the Justice, (being a Judge of record) maketh his record thereof (in the judgement of the Law) as strong and effectually, as if the offenders had confessed the force before him, and (touching the restraining of the traverse) more effectually, than if the Force had been found by a Jury upon the evidence of others. But the Force must be in the presence or view of the Justice of the Peace, or else he can neither record it, nor yet commit the offenders: for upon force found by enquiry onely (although this presentment of the Jury be a conviction of the offenders, it is thought the Justice of Peace, can neither fine nor send to Gaol. But however he is to remove the offenders that be present, that so he may restore the other, and may bind the offenders to the good behaviour. And if they be gone, yet he may make his Warrant to take them, and send them to Gaol until they have found sureties for their good behaviour, But for the further opening of this, these things

Traverse.
Certificate.Commit-
ment.

Enquiry.

Cha. 14. things must be known. 1. The Iustice of peace may not view a force, or fine, or imprison in his own case. And yet if he come there, and they make an assault upon his person, he may send them to Gaol for this offence. 2. If one enter into a house upon another with force, and when the Iustice comes, both sides are fighting for the possession, the Iustice may remove the force, but cannot give possession to the owner of the house. 3. If he that hath entred forcibly, hath driven the owner to one end, or part of the house only, the Iustice may remove and commit them that have so entred. 4. If there be men in arms in another house near, though in another County, to beat them that take possession of the house in this County; in this case it is said the Iustices may remove them. 4. If the Iustices come there by Accident, where the force is newly done, they cannot arrest or imprison, unlesse there be a forcible detainer in the view. 5. If the offenders before Arrest, escape for that time before the arrest, and after the same day the Iustices meet them in another place; in this case they cannot commit them to prison. 6. If the Iustices coming to the place meet some of the offenders by the way in harnessse, or see some going thither in harnessse, to keep the place; they cannot upon this commit them to prison. 7. If when the Iustices of peace come, the offenders escape into another County; the Iustices of peace cannot arrest them there, albeit it be upon fresh suit. And yet it is said by some, that if in this case before arrest of the parties they fly, so that the Iustices may arrest them,

But not commit them to prison. But I doubt
And yet if both houses be in one County,
is out of question. So if they get into a Ca-
le in the same County, the Iustices may up-
n fresh suit arrest them and commit them.
All this is to be done there only where the
party grieved (in the sense of the Statute)
which is the party that is to have restitution,
both complain, tender the costs, and not where
any man doth complain. And for the opening
hereof take these cases. If a man have a Rent
issuing out of the Land of another, which Land
is detained with force when he would distrain,
he that is so disturbed is not a party grieved, to
be relieved by the Statute. And if a man be
seised of Land to which Common is appendant,
is disseised of the Common, and then aliens
the Land to his son, and dieth, after which the
Land out of which this Common is issuing, is de-
tained with force; in this case the son is not
a party grieved by this Statute. So if after
the fathers death, a stranger doth enter by
abatement into the Land, and holdeth by
force, the son is not a party grieved within the
Statute. So if a man be seised of Land, of
which such a forcible entry is made and dieth
before he complain, in this case his son and
heir cannot complain for this entry. So if a man
devise his Land by Will and dieth, and be-
fore any entry made by the devise, a force
is made, the devisee is not a party grieved. But
if a man make a lease for five years on condi-
tion that if within the first two years the lessee
pay to him ten pound, he shall have the Fee, and
Livery is made accordingly; in this case if any
such

What per-
sons may be
relieved up-
on the Stat.
Who not.

Cha. 10. such entry be within the five years, the less a party grieved, albeit the Condition be performed. So if a man be possessed of a Tenement, and make the heirs or *I S* his executor and dieth, *I S* being also dead, leaving issue daughter, his wife with childe of another daughter; the first enters, and then the other born, then such force is committed; in this case both the daughters are parties grieved, if one enter by disseisin to the use of another who doth after agree to it, and then a forcible entry is made; in this case neither the one nor the other is a party grieved. So if one enter by disseisin to the use of an Infant, who doth agree to it, and then such a forcible entry is made in this case the Infant is not a party grieved. And generally the party to whom Restitution shall be made, he shall be accounted a party grieved, within the meaning of this Statute. And for this see afterwards.

Fine.

7. The same Iustices of Peace, or some of them that shall see the Force (as having been knowledge of the matter, and of the quantity of the offence, and having the custody of this Record) are the proper Iudges over this offence and therefore may assess the Fine upon every such offender. But the Fine must be imposed upon every Offender severally, and not upon them joynly. And the Iustice ought to estreat the same fine, and to send the Estreat into the Exchequer: and that from thence the Sheriff may be commanded to levy the said Fine to the Common-wealths use. But upon the same fine so assessed and estreated, it seemeth the Iustice is to deliver the offender. Also upon pay-

ment of the said fine to the Justice, or upon
 sureties bound by recognizance for the pay-
 ment thereof, the Justice may deliver the
 offenders again out of prison at his pleasure,
 by some opinions. But *quare*, for that the
 Sheriffe is accountant for all fines. Or the
 Justice of peace (by some opinions) may re-
 cord such force, and commit the offenders,
 and after certifie the Record to the Justices of
 Assize and Gaol-delivery, or else to the Gene-
 rall Sessions of the Peace, and there the offen-
 ders may be fined. For the Statute doth not
 say, that the Fine shall be assessed by them that
 Record the Force; but rather the Justices of
 Peace may certifie or deliver the Record by
 them made, and referre the Fine and further
 proceedings therein, to the upper Bench,
 which is thought to be the safest course. 8. Al-
 so the Justice of peace, notwithstanding his own
 view of the force, may and ought in some good
 Town, or place near, where the force was, to
 enquire by a sufficient Jury of the same Coun-
 ty, to be returned by the Sheriffe, as well of
 those which made such forcible Entry, as of
 those which made such forcible detainer,
 wherein these things must be observed. 1. That
 one Justice of peace alone out of the Sessions,
 may make an Enquiry; whereas otherwise to
 hold a Sessions, there must be two at the least,
 and one of them must be of the Quorum.
 2. This Inquiry may be so made within a mo-
 neth after the time. 3. It may be made whe-
 ther the offenders be present or gone, at the
 coming of the Justice of peace. 4. This Inqui-
 ry may be made, albeit the Justice of Peace

Cha. 14. go out to see the place where the force is, and upon his view, make a Record : But he must take care the Records do not differ, for if the Enquest finde contrary to the Iustices Record, the last Record is void. 5. One Iustice may make the view, and another Iustice may make the Enquiry. 6. If several enquiries be made by several Justices upon the force, every one of them is a good enquiry. 7. If the Record of Inquisition say, the Jury was sworn, and indeed it was not sworn ; yet it is a good enquiry. 8. If the Jury be under 12, or any of them have been Attaint of a false oath, or in a *Decies tantum*, or are *Ambodexters*, the Jury is not good unlesse there be 12 of the Jury besides those men. 9. This Inquiry must be made by men of good estates. And therefore the Iustice of Peace is to send his Warrant to the Sheriffe, to command him in the behalf of the Keepers of the Liberty, to cause to come before him four and twenty sufficient and indifferent persons near about the place where the force is supposed to be ; and every of them so returned, must have forty shillings by the yeer at least, in Lands and Tenements. And the Sheriffe is to return Issues upon every man so summoned, the first day twenty shillings, the second day forty shillings, and the third day fifty shillings, and every day after double. And upon default of appearance of the Jurors, the Iustice may grant an *Alias*, and after that, *Pluries* infinite till they come. And if any Sheriffe, or Bailiffe of Franchise, that hath the return of such Writ, shall be negligent, he shall forfeit twenty pound. And if such Jurors have not forty shillings land

Warrant to
the Sheriffe.

annum, yet their presentment of such Force, is good for the Common-wealth, so as the Offenders shall fine therefore. And if the Sheriffe return smaller Issues upon the Inquirers, then the Statute doth appoint, yet the party indicted, shall not impeach the inquiry thereof; but these defaults in the Sheriffe, for not returning sufficient men, may be punished by the Iustices of Peace, who may hear and determine these offences by Bill or Indictment, wherein shall go the like processe as against men indicted for trespassse. 5. It is convenient upon such Inquiry, that the evidence be given openly to the Jury, to the intent it may appear to the Iustice of Peace, or Court, whether there be reasonable cause to stay Restitution, or not, after the Indictment found. 9. If upon such Inquiry, such forcible Entry, or such forcible Holding, or Detainer, shall be found by the oathes of the Inquirers, then the said Iustice of Peace shall re-
Restitutione

 seise the Lands or Tenements so entred upon or holden, and thereof put the party in possession again, which in such sort was put, or holden out. As touching which point, these things are to be known. 1. Any one, or more Iustices of Peace, before whom the force is found, and not any other Iustice of Peace in, or out of Sessions, Iustices of Oyer or Terminer, or Gaol-delivery, may in person put the party out, or kept out, in possession again; or may award his or their precept, under his or their own Teste, to the Sheriffe to do it. And if the Iustice, before whom it is taken, be dead; or otherwise, the Record being before the Iustices at their Sessions, they may award execution by Writ,

Cha. 14. but not without a Writ, as the Iustice of peace himself that took the Inquisition may do. Also the Iustices of the upper Bench, upon a Certificate by the Iustices of peace of the Force found before them, or upon removall of the Indictment by *Certiorari*, may by Warrant to the Sheriffe, not in person, award Restitution And to do this, the Iustice, or Sheriffe may break open any house; and take *posse Comitatum*, and if the Sheriffe return, he cannot do it for resistance, he will be amerced. 2. The restitution must be made to him that is put out, not to his Heirs, Executor, or any other after his death, but the parties in this case may be fined and imprisoned, *Cook* 3. part of his *Instit.* fol. 242, 243. 3. No restitution shall be made, but where the forcible Entry, or detainer is first found by Inquisition, and that upon sufficient Indictment also. For if the Indictment or Inquisition be quashed for insufficiency, no restitution can be had upon it. For this cause the Indictment must expresse. 1. A putting out *Expulerunt*. 2. The quality of the thing entred into, as Messuage, Cottage, &c. Therefore they entred the Tenement, is void for uncertainty. 3. A keeping out, it must say, Yet they keep out. 4. It must be with strong hand, or with multitude except it be implied by reciting the 8. of *H.* 6. and conclude against the form of the Statute aforesaid, or by some other such words And if one be restored on an insufficient indictment, and it be removed into the Kings Bench, the Court will cause the party to be restored. And if upon an insufficient Indictment, the Iustices grant restitution before

Indictment.

before it be done, the same Iustices, not others, may grant a *Superfedeas* to stay it. 4. Restitution is onely where a man is put or held out of land, or the like, not out of rent, or the like. 5. The Iustice may make restitution notwithstanding any offer of Traverse. Yet in this case the safest way is to send the Indictment into the Kings Bench, or accept of the Traversers.

But as touching Restitution, Inquisition, and the three years possession, and for the clearing of the Law touching them, these things are to be known. And first, to whom Restitution shall be made, and upon what Inquisition.

Restitution
to whom it
shall be
made.

If it be found that *IS* was seised, until he was disseised by *ID* by force, or until *ID* entred upon him by force, in this case Restitution shall be made to *IS*. So if it be found that *IS* was seised, until disseised by *ID*, peaceably which *ID*, holdeth with force; in this case Restitution shall be made to *IS*. And if it be found that the father die, and a stranger enter by Abatement, and detaineth with force; in this case Restitution may not be made to the sons. If it be found that the father made a lease for years, and die, the years expired, and before such an entry made by the son, such a force is committed; in this case the son shall not have Restitution. If it be found that a man is seised of Land, and hath issue a daughter and dieth, his wife with Child of a son, the daughter is ousted with force, and then a son is born; in this case the daughter, and not the son shall have the Restitution. If it be found that *IS*

Cha. 14. was seised until he was disseised by *ID* and that *IS* ousted *ID* with force; in this case the Restitution shall be made to *ID* and not to *IS*. If it be found that *IS* was seised until *ID* ousted him with force, and also that *ID* was so seised until by *IN* disseised by force; by this Inquisition *ID* the first disseisor will have Restitution against *IN*, and thereupon *IS* shall have Restitution against *ID* and all upon the same verdict. If it be found by several inquiries that a man is ousted by force by several persons at sundry times, of one and the same thing, each Inquest is good, and he may have Restitution upon any of them, but he shall have but one Restitution. If it be found by several inquiries (i) by one enquest that *IS* is ousted by force, and by another enquest that *ID* is ousted by force, and both of the same land; in this case each of them may have restitution. If it be found that *IS* was seised for the life of *A* and he is ousted with force by *B*. and that *A* is now dead; in this case *IS* shall have restitution upon this Inquisition. If it be found that two joint-tenants be ousted by force, in this case one of them may have Restitution without the other. So if it be found that the Father was seised until he was ousted with force, and he die before entry or restitution, the sons shall not be restored. So of the Executors of a Lessee for years ousted before his death. If it be found there is lessee for life, the remainder in Fee, and the Lessee for life is ousted by force; in this case he in remainder shall not be restored. If it be found that *IS* was seised until by *ID* he was ousted by force, and the Inquest

Inquiry doth not say, at the request of *I S*, yet he shall have Restitution. If it be found that one is ousted by force, and thereupon he is restored, and after he is ousted by force again by the same party; in this case he shall not have Restitution the second time, upon the same Inquisition. If the Lessee for life upon Condition, be ousted by force, and the Lessor enter for the Condition broken, and this be found; in this case the Lessee shall be restored. If husband and wife before Issue had, are ousted with force, and then they have Issue between them, and the wife dieth, and this be found, the husband shall have Restitution. If it be found that the land out of which one hath Rent or Common is detained with force, so that he cannot have his Rent or Common; in this case he cannot have Restitution. And finally, it is so for the most part, That he that is the party grieved, that must complain, he is the party to whom Restitution shall be made.

And as touching the three years possession these things are to be known: That if a Disseisor continue the possession quietly for one year, and then maketh a Feoffment, and taketh back an estate again, and then he continueth the possession for two years more, this is not a good possession for three years within the statute. So if Lessee for years continue in possession for two years, and then his terme expireth, and after this he holdeth for another year, this is not a good continuance in possession for three years. But if a man make a Lease at will, and dieth, after whose death the Lessee doth continue in possession three years, this is a

Cha. 14. good continuance of possession within the statute. If a Disseisor do continue in possession two years, and then is disseised by his eldest sonne, the father dieth, and the sonne continueth in possession for one year more; this is not a continuance of possession for three years within the proviso of the Statute. The same Law is, if the father disseiseth his eldest sonne, and continueth in possession two years, and the sonne after his death for one year more; this is not a continuance of possession by three years within the statute. But if the disseisor continue the possession for two years in his own life time, and dieth seised, and his son and heir entreth, and continueth the possession for one year; this is a continuance of possession within the Proviso. The same Law is, if the Disseisor continue possession for two years in the life time of the Disseisee, and one year after his death; this is a continuance of possession for three years within the statute. If the Disseisee make a continuall claime within three years, but make no entry; this is not a continuance in possession for three years within the statute. The same Law is, If the Disseisor continue possession by two years, and his Fcoffee by one year; this is a continuance of possession for three years. If one recovereth against another in a *procipe quod reddat*, by covin, and he against whom he recovereth hath the quier possession thereof for three years; this is a possession within the statute. If one make a Lease to another for the life of *IS*, and the Lessee doth continue the possession for two years, and then *IS* die, and the Lessee doth continue the pos-

the sta-
possession
is eldest
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possession one year after his death ; this is no continuance of possession within the statute. But if he continue the possession for three years after the death of I S; this is a good continuance of possession. If the Disseisor take a Lease for life the remainder over in Fee, and the Lessee holdeth in for a year and dieth, after whose death he in remainder entereth and continueth the possession for two years more ; this is not a continuance of possession within the proviso of the Statute.

In these cases a man may alledge to stay restitution any of these things. 1. His quiet possession for three years : For there shall be no restitution awarded in case where the party indicted hath been in quiet possession by the space of three whole years together, next before the day of the Indictment found, if his estate be not ended. And this the party may alledge, and upon this, restitution shall be stayed by the Iustice of Peace until it be tried, if the other party will deny or traverse the same.

Sect. 6.

Causes to stay Restitution,

2. He may deliver to the Justices of Peace, or Court, a *Certiorari*, and this is a *Supersedeas* to them. And therefore if a man have committed such a force, and be in doubt that he shall be indicted thereof before the Justices of Peace upon the Statute 8. H. 6. and that thereupon restitution will be awarded against him, he may have a *Certiorari* out of the Kings Bench ready ; and when the Bill of Indictment is found, he may presently deliver it to the Iustice of Peace, or Court, and this is a *Supersedeas* to them ; for hereupon the Indictment shall be removed unto the Kings Bench. And although the

Certiorari.
Supersedeas

Supersedeas

Cha. 14. the Indictment be found after the *Teste* of *Certiorari*, it is not materiall. But if a *Certiorari* come to remove an indictment taken before a Justice of Peace in the Country, and the party will not sue to remove it, but doth suffer it to lie still, some think the Justice may proceed to grant Restitution. But it seems the Justices *ex officio* are to send the indictment away because they are commanded so by the Writ, and this Writ is a *superfedeas* of it self.

And after restitution made by the Justice of Peace, if the other party do remove the indictment by a *Certiorari* of a more eigne date than is the indictment, the Justices of the King's Bench may award restitution back again: but upon the matter the Justice of Peace had no power to make Restitution, for that the *Certiorari* had relation from the date: After Restitution granted from the Sessions, and delivered to the Sheriffe, the other person having a *Certiorari*, delivereth it also to the Sheriffe after the Sessions, the Sheriffe shall not surcease thereupon, for he hath no authority to allow thereof. But if the *Certiorari* were delivered to a Justice of Peace, he may thereupon grant a *superfedeas* to the Sheriffe. And if Restitution were made by the Sheriffe before the said *superfedeas* came to his hand, then the other party shall have Restitution back again in the King's Bench upon the indictment removed thither.

3. He may tender a Traverse: but some doubt whether he may be admitted to a Traverse before the same Justice of Peace. But this tender of a Traverse (to an indictment of a Forcible Entry) upon the Statute of 8. H. 6. is no *superfedeas*.

Traverse.

but in discretion; so as the Justice of Peace or Court may grant or stay the Restitution at their discretion, according as the truth of the right or title shall appear to them. And so the use of the Kings Bench. Or else the Justices of Peace before whom the Indictment was found, may after traverse tendered, certifie or deliver the Indictment into the Kings Bench, and so refer the further proceeding thereof to the Justices of that Court.

But if the Party indicted shall tender a Traverse presently, whereupon restitution is stayed, and after he shall not pursue his Traverse with effect (but dis-continueth it) and after doth tender another Traverse; upon restitution prayed, at another time, the Justice of Peace or Court shall do well to proceed to grant restitution notwithstanding such Traverse tendered. And it is the course in the Kings Bench, that he that tendreth the Traverse there (upon such an Indictment) shall bear all the charges of the Triall, and not the King; nor he at whose prosecution the Indictment was found. And the same Reason seemeth upon an Indictment traversed before the Justices of Peace.

4. He may shew the insufficiency of the Indictment for the causes before alledged. 5. And some have thought he may pleade the insufficiency of any of the Jurors; for not having forty shillings *per annum*. And some think that the Justices of Peace ought not to stay restitution, save only in case where three years quiet possession is alledged, or by removing the record.

The Mayors and Officers of Cities having
Fran-

Cha. 15. Franchise, have like authority therein as the Justices of Peace have within their County. 8. 9. c. 9.

And if the Justices of Peace be negligent in their offices upon these Statutes, they may be punished.

CHAP. XV.

Of an unlawful Assembly, Rout and a Riot.

Se^{ct}. 1.

Unlawful
Assembly.

Rout.

Riot.

FOR the better understanding of the Law in this (which hath some affinity with a Forcible Entry and Detainer) these things are to be known. 1. That an unlawful assembly is where three or more do meet to do an unlawful act against the Peace, as to beat down a pale, ditch, house, or the like ; or to do a lawful thing in an unlawful way or manner, as to distrain for his Rent with force and violence ; but they do nothing. A Rout is when they go forward (after they are thus met) in a turbulent way to effect, but do not finish it. A Riot is when they do not only begin, and go on, but finish their work. So that in these offences there must be these things concurrent. 1. There must be three or more persons in the work, and this may be made up of women and children of any discretion. But this offence may be committed, though some of the company stand by, and do nothing ; for if they stand by and countenance it, it is as bad as if they did it. But if they come by chance and intend nothing

contra

contra. 2. Their Assembly that they go with, or their intent must be evil, to do some hurt to men, or that which is theirs (which in some cases will be presumed :) As if the Lord with two or more persons enter on his Copy-holder with force, and cut and take his corn, because he doth not pay him his fine : this is a Riot, and yet this entry lawfull. So if a man make resistance against the Sheriffe, or any other in their doing of justice : So, if two or three make a forcible entry. And this may be punished both wayes.

If many come together unarmed, they know not why themselves ; this is no offence punishable, unless it can be known they came to some evil intent, or they do miscarry themselves in some evil act.

If one ride or go abroad with his servants armed and in harnessse, and do no more, this is an unlawful assembly, if not a Riot. But if he intending a Riot by an entry into land, or the like, go with his ordinary servants, who know nothing, and they do enter, this is not a Riot in the servants, if it be any in the Master. To go in a privy coat of mail is not this offence.

And albeit one be threatned, and in danger of his life, and to defend himself he gathers a force, and they ride about armed ; this is a Riot. Yet if they did abide in his house, haply it may be justified.

But if a man do only go abroad with his household-servants which he hath commonly in his family, though there be more then his ability to keep, this is no offence ; and if they hap to make an affray, or do any unlawful thing, this

Cha. 15. this will not amount to this offence, except they can appear they had an intent before to do but an affray only.

The watch in London on Midsum night, Assemblies for merry meetings on wherein there is no breach of the peace, and terrour to the people, are not taken to be an Offence. And if there happen to be an affray at such meetings, it is not interpreted to be an Offence. But the coming to such a meeting with such an intent, or the taking of sides and parts at such a time, and in such a case, especially if after their parting they meet again, may amount to this Offence.

If a Jury come to try an Issue, and they happen to fall out and fight; this is not this offence but an affray.

The Sheriff and other Officers of Justice, going about with Troops and arms do not commit this offence.

Sec. 3.

3. The manner of their motion and action (if the matter be good) must be bad, as where it is turbulent, so that by their coming together they breed some apparent Disturbance, either by word, gesture, or action; so that peaceable men are feared, or light men imboldened. For as a man may do an unlawful thing, so as it may not be a Riot; so he may do a lawful thing so as to make it a Riot. And therefore if a convenient number only with convenient Tools, do only meet together to abate a common Nuisance, as where a man hath erected a Wear on a common River where the people pass with their Boats, and they come to the place and make a Trench in his ground that did it, the

be

ce, except letter to do it, this is no offence.

fore to do But if in doing this they come weaponed, or
the night, or use threatening speeches, that
Midsum they will do it if they die for it, or the like, this
ings one may make it a Riot. So if I claim a piece of
peace, a timber, and another hath better right to it.
en to be then I have, and I take a convenient number of
be an aff Persons, and peaceably remove it, this is no Ri-
d to be ot. Dalt. J.P. c. 46.85.

1. The Justices of Peace may proceed upon
the Statute of *Northampton*, of which see *Dalt.*
J.P. in *Cap.* 46. 2. The Party grieved may have
a Commission out of the Chancery to enquire
of it, and of the neglect of the Justices of Peace
in punishing it. 3. Or he may have a Writ out
of the Chancery to command the Justices of
Peace to execute the Statute 13 H. 4. 4. The
ordinary remedy is by address to the Justices
of Peace. Every one of which must do his best
to prevent, and stay them in doing: for this he
may and ought to do upon notice of it. 1. To
go to the place, if he can conveniently, and he
may take with him (especially if it be great)
the *Posse Comitatus* and suppress it. 2. If he
finde any of the Rioters, take and imprison
them, and binde them to the good Behaviour.
3. If he cannot go, or stay when he is there
himself (they being gone for the present) he
may command his Servants to go, or stay and
suppress it, and to bring the Rioters before him
to finde sureties for the good behaviour. 4. The
Riot being done, the Justice of Peace can nei-
ther record it, make enquiry, set Fine, award
Processe, or meddle with it, but as a Trespasser;
or upon the Statute of *Northampton*, if it be a

Seff. 4.
How such
Offenders
shall be pu-
nished, And
the power
and duty of
the Justices
of peace
herein our
of Sessions.

View.
Commit-
ment.
Good behav-
iour.

For-

Cha. 15.

Forcible Entry. And yet if the Justice of peace sitting judicially, see a Riot done before his face, he may record this, and command the party to be arrested. But if it be in another place, the party may traverse it. 5. Every Justice of peace is to see the Statute of 13. H. 2. executed; for though the two next Justices only are in danger of the Fine of one hundred pounds, yet all the rest may be punished. And in the execution of the statute, he is to do this wise; 1. Get the assistance of the Sheriff or any other Justice of peace, if he can. 2. Go to the place, if he can. 3. If he finde any Rioters or unlawful Assembly, commit them to prison. 4. Compell them to give sureties of the peace or good behaviour. 5. Upon refusal commit them. 6. Take away their Weapons. And further he cannot go till inquiry, which must be made by two Justices of Peace. And any two Justices of peace may do this, and they may proceed upon the Statute of 13. H. 4. as before.

Commitment,

Only, 1. They are to send for the Sheriff or his under-Sheriff; for it cannot be done without one of them, if the Riot doth continue for in this case he is one of the Judges. And if they come not, he that doth come is excused. But the enquiry after, when it is past, may be made by two Justices of Peace, without the Sheriff save only as Minister. And if any Justices of Peace do it, the two next are excused of 100. pound. 2. They must likewise, as when one Justice doth it, go to the place. 3. Take need be, the *Posse Comitatus*, all above fifteen years old. 4. Arrest the offenders, remove

the Force, commit the Rioters, and take away Cha. 25.
 their Weapons; and so they may do to all that
 are with them, and all that they meet coming Arrest.
 from them riotously arrayed: and if they resist,
 beat, wound, or kill them; but may not record
 a riot done by them. 5. If the Rioters be e-
 scaped, they cannot arrest them, or award pro-
 cess to arrest them at another time or place:
 but the record must be sent into the upper
 Bench, there to be proceeded upon; but no
 Traverse lieth to this, yet they may send their Traverse.
 Warrant to bind them to their good behaviour. Good beha-
 viour.
 6. After arrest, the Justices and Sheriffe must
 formally, in the nature of an inquisition, record
 the Riot in writing as the case is: For if they Record.
 commit and not record, they lose 100 pound.
 And they must take care they do the party no
 wrong, for he cannot traverse it, but is remedi- No traverse.
 less. 7. If another Riot be made upon or be-
 fore them, they are to record that also. 8. They
 are then to send them to Goal, which the Commit-
 Sheriffe is to do with the *Posse Comitatus*: and ment.
 if they record and not send to Goal, they lose
 100 pound. 9. The same Justices, and none Fine.
 other, are to fine them: which fine must be of
 good value, that the charges may be born by it.
 And this Fine they may either Estreat into the Estreat.
 Exchequer, or keep the offender in prison till
 he pay it to the Justices or Sheriffe. 1. H. 5. 8.
 And in this Record they may certifie, if they
 will, to the Kings Bench or Quarter Sessions, or
 keep by themselves. And in all this the Sheriff Certificate.
 must joyn with them. 10. But if the Riot be
 past, the two Justices must, within a moneth, at
 a private Sessions enquire by a Jury of the Riot, Enquiry.
 F and

- Cha. 16. and being found, record it here, and end the matter, let the fine, make out proceſſe, come till payment, or upon payment, or ſurety pay, deliver the priſoner, receive and try Traverse, and diſmiſſe the party if they ſue the cauſe. But after Traverse, the uſuall courſe this caſe is, to tranſmit the Record into Kings bench or Seſſions, there to be tried. And if there be any undue practice, that the Juſtice will not find it, it is to be certified by the Sheriff and the two Juſtices into the Kings bench.
- Pine.
- Traverse.
- Certificat.

CHAP. XVI.

About a stolen Horse.

Sect. 1.

The power
and duty of
the Juſtices
of peace
herein out
of Seſſions.

Every Juſtice of Peace (after ſale of a ſtolen Horſe, and in an open Fair and Market within ſix moneths after the Felony done) may take and hear the claim and proof of the right owner, his Executor or Administrator, or other appointed by him, by two ſufficient witneſſes upon oath, which he may give within fourty dayes after the claim. And he may examine the buyer, or him that hath the poſſeſſion or intereſt thereof, what money he paid for the ſame, *bona fide*, ſo as the right owner paying the ſame money, may have his Horſe again.

El. 12. 2. & 3. Ph. & M. 3.

For the better underſtanding where theſe things are to be known: 1. General Statute of any thing vendible in Fairs and Markets.

overt, are good not onely between the parties, and bind them, but all others that have right thereunto, be they Infants, *Feme Coverts*, Ideots, *non compos mentis*, such as are in prison, or beyond sea, such as have in their own or anothers right, as Executor, &c. but the King is not bound, *Cook 2d part. Inst. 713.* But in the Sales these things are requisite: 1. It must be made in a place overt and open, as the fields or streets; therefore sale of a Horse or beast in a stable, back-side, or barne, is not good. 2. It must be in an apt place, that is, the place appointed and used for sale of such things, as Plate in the Gold smiths shop, Horses in the Horse Fair; therefore sale of Plate openly in a Scriveners shop, or Horses in the Sheep-Market, is not good. 3. It must be Sale, not a Gift, without valuable consideration. 4. The Buyer must be ignorant, for if he knoweth the Seller hath at the most but a wrongfull possession, this will not binde the right owner. 5. There must be no Covin in the Case. And therefore if there be a sale of purpose between two, to bar him that hath right, this will not bind him. 6. The sale must continue, for if the wrong-doer get the goods again, him that right hath may take them from him. 7. There must be a sale and contract; and therefore if it be made by one not able to contract, as an Infant, *Feme Covert*, &c. or to a man of his own goods; in these and like cases it is not good. 8. The contract must be wholly and originally made there, and not begun out of the Market, and finished there. 9. The sale of any thing but Horses (as afterwards) is good to alter the proper-

Sale of any thing but Horses alters properly without toll.

Cha. 16. ty, though no Toll to be paid. 10. It must be between Sun and Sun, and during the time of the Fair or Market. 11. If the Owner of the Goods pursue the Felon of the goods, and cause him to be attainted, the sale of them here by the Kings Officer that hath seized them, is not good to conclude the Owner. And yet a Sale at any time, or in any manner is good to conclude the Parties, albeit it be not good to bind a stranger that hath right. To alter the property of a stolen Horse, Mare, Gelding, or Colt, in a Fair or Market, these things must concur: 1. It must be openly ridden, led, walked, or driven, or kept standing an hour together at least, between ten a clock and Sun set, in the open place of the Fair or Market wherein Horses are commonly used to be sold, and not in any house, yard, or back-side, or other privy place. 2. All the parties of the Contract present in the Fair, must come together, and bring the Horse to the open place appointed for the Toll-taker, or Book-keeper where the Toll is due. 3. There must be written and entred in the Book, the Names and Additions of place, and mystery of all the parties to the Sale, and the Seller, and (at the least) one special mark of the Horse sold. 4. The Toll must be paid where it is due; if not, the buyer must give a penny for his Entry to the Book-keeper, and all this must be done between ten a clock and Sun-set. 5. The Toll-taker (or where more is paid) the Book-keeper, Bailiff, or chief Officer of the Fair, must either take upon him the perfect knowledge of the seller, his names, and places of dwellings, or else he must bring to him some credible Person that

can so do, and that all this, and the very price of the Horse be expressly entered in the Book. 6. He must give to the buyer, requiring it, and giving two pence for it, a Note in writing out of the Book of all this; otherwise the Sale, as to him that hath right, is void.

But the Book-keepers not delivering the Book two dayes after the Fair, &c. taking Toll where none is due, or the like, will not make the sale void. And if the sale be in all points according to these Statutes, yet if the Owner come within six moneths after the Felony, to a Justice of Peace near the place where the Horse is, and claim him, and within fourty dayes prove him to be his by two witnesses, and that it was stollen from him, and pay or offer the money that the party which hath him, gave for him, to be by the same parties oath attested before the Justice of Peace, he shall have his Horse again.

CHAP. XVII.

Of the Peace, and Good Behaviour, and Sureties thereof.

THE Surety of the Peace is an acknowledgement of a Bond to the King, taken by a competent Judge of Record, for the keeping of the Peace. That of the Good Behaviour, is for the keeping of the good Behaviour, and hath affinity with the former.

The Justice of peace may of his own authority

Señ. 1
Surety of
the Peace
and Good
Behaviour,
What it is.

Señ. 2.

Cha. 17.

The power
and duty
of the Iustice
of the peace here-
in out of
Sessions,
and in what
cases, and
for what
causes it
may be
granted.
Peace upon
discretion,
and how.
Rioter,
Barreter,
Affray or
Him that
doth threa-
ten
Aimour.

rity, motion, and discretion, or by authority from another, require any man to give surety of the Peace, in these cases following, viz. 1. Where he doth know him to be a common Rioter or common Barreter. 2. Where he doth make an assault on the Justice of peace himself. 3. Or upon another in his presence. 4. Where he doth see him making an affray, or about to do it, or hath newly done so. But not after he hath done it. 5. Where in his presence he heard one to threaten to kill or beat another, or burn his house. 6. Where he seeth men contend in hot words before him, or he suspects they are inclined to quarrell. 7. Where men go or ride armed offensively, or with an unusuall number of Servants and Followers. 8. Where Servants and Labourers go with weapons contrary to the Statute 12.R.2. 9. Where he that is bound already hath broken his Bond, and he may bind him *de novo*, 1.Ed.4.40. But some say the forfeiture must be levied first. 10. Where the Sureties of one that is already bound are insufficient. 11. When a Constable shall bring one before him, that doth threaten in his presence to kill, maim, or hurt another, or hath attempted the breach of the peace before him, by drawing weapon, assaulting, or striking; or one who the Constable found quarrelling in a house, or making, or that hath newly made an affray especially if he hath wounded another in the affray.

Self. 3.
Upon Re-
quest.
Oath.

When the Peace is granted upon Request there must proceed an Oath of the party demanding it; That he standeth in fear of his life, some bodily hurt, or the firing of his house

him (against whom he desireth it) or by his procurement : and that he desireth the peace, not of malice, but of very fear, which may arise from his threatening to do it, or otherwise. And without this Oath it is not to be granted : but upon this it is grantable in these cases ;

If one do threaten to kill, maim, beat, imprison, or hurt another in his body, or to fire his house or goods. And so it seems if he threaten to kill, or hurt his wife, children, or servants :

But it is not grantable to me, because another goeth with weapons, who did never declare any malice or evil purpose against me.

Nor where I shall swear I am in fear of him that he will do my servants or cattel some hurt, because we are at variance. Nor where no fear is of present or future danger ; but it is of meer vexation : Yet if the party will take his Oath he is in dread of his life, the Justice of peace cannot well deny it.

If the husband do use outrageously to beat his wife, or master his servant, and they make oath hereof, and desire the peace, the Justice of peace may not deny it.

1. The Justice of peace may of his own motion and discretion, &c. or at anothers request, and *ex officio*, or upon a *supplicavit* as a Minister, as upon Articles exhibited and proved before a Master of the Chancery, he may send this Writ to the Justice of peace, to bind the party to the good behaviour ; and they may require it of these persons following.

2. One that is of evil Name and Fame, in generall, dangerous and suspicious, or keepeth company with such, especially if he be defamed

Stat. 4.
Good behaviour.
By common Law.

Evil Name.

Cha. 17. med or detected in any one of these particulars
34. *Ed. 3. 1.*

Robber. 3. A common robber beyond the seas, that liveth idly here, one that doth lie in wait to rob, or is generally suspected to be a high way Robber, or doth attempt to rob men, and put them in fear, or is suspected to be a common pilferer. 34. *Ed. 3. chap. 1. Dalt. J. P. 221.*

Cheater. 4. A common Cheater or Cousener, as one that by false Letters or Tokens gets money, or other things from others. *Dalt. J. P. 88.*

Rioter. 5. A common Rioter.

Barreter. 6. A common Barreter, Quareller, or breaker of the peace.

Libeller. 7. A Libeller (i. e. one that procureth, contriveth, or doth publish any Libel against another, especially if it be against a Magistrate. So also if a man be a common slanderer, or common tale-bearer, and his slanders and tale-bearing be of dangerous consequence and do much mischief: these, I think, are fit to be bound to the good behaviour.

Poysoner. 8. One that doth practise to poyson men, or doth poyson Catrell, Poultry, or other Creatures.

Peace-breaker. 9. One that is a dangerous person and is like to commit homicide, or other grievances to the bodies of the people. 34. *Ed. 3. 1.*

Forcible entry. 10. One that hath committed a Forcible Entry, or Detainer. Also all persons unlawfully and riotously assembled; or unlawfully wearing Armour by night or day, or otherwise affrighting the people. *Dalt. J. P. 73. Dalt. J. P. 109.*

Drunkard. 11. One that is a common Drunkard.

12. One

12. One that is the putative Father (that is) Cha. 17.
hath begotten, or is suspected to have begotten Bastard
a bastard child.

13. One that doth threaten to beat, or doth
beat a witnesse for giving of evidence against
him.

14. One that doth cast down chamber-pots
upon men, or meates purposely to spoil or to do Inconti-
mischief: By Baron Thorpe at Gloucester Assizes nant.
1654.

One that is a common Whoremonger, or a
common Whore: One that hath committed
adultery or fornication.

15. One that doth keep or haunt, or is vehe-
mentely suspected to keep or haunt a common
Bawdy-house. One that keepeth a lewd woman
in his house. *Cromp. 7. P. 10.*

16. One for conspiring to take away anothers
life, indicting him, and giving false evidence
against him: So 19. *Jac. in Chancery*, it was
granted by Sr Matthew Cary a Master of the
Chancery. Conspira-
tor.

17. One that being a materiall witnesse, and
required by the Justice of Peace, both refuse to
be bound to give evidence at the Gaol-delivery
against an offender. *Dalt. 7. P. 66.* Witnesse.

18. One that selleth Ale contrary to the
Justice of peace order. *Dalt. 7. P. 37.* Ale-sellers.

19. One that sheweth himself contemptuous
in word or deed, to the person or authority of a
Justice of peace, especially if he be in execution
of his office: as to call him knave, or bid him
kiss behind, or the like, or being called before
him, doth refuse to answer him, or to tell his
name, *Cook 11. 105.* or being required by the
Justice Contempt
of authori-
ty.

Cha. 17. Justice to assist him in the doing of his Office doth refuse it.

20. One that complains of a Riot, and having drawn the Justice of peace to the place, will not follow it, but deludes him. Or charge a man with Felony before him, and will not give evidence. If one be appointed by the Justice to take an Apprentice, and upon his refusal be bound to the Sessions, and there he refuseth Resol. by the Judges *temp. Car. Reg. 7.* So he that shall accuse another before a Justice of Peace with any foul crime, being put to make it good, doth wave it.

Perjury.

21. One that suborneth wimess to perjury. *15. Car B.R.* or is perjured. *March 11 pl. 30.*

Idle liver.

22. One that being an idle person, and having nothing whereon to live, yet fareth and weareth well, and spendeth much in Ale-houses and Taverns, if upon examination he cannot give the better account of his life. And upon this branch we conceive clearly any wandering idle person may be put by a Justice of peace to give sureties, and for want of them be sent to Gaol.

Messenger of Theeves.

23. One that is a common Messenger for Theeves.

Eves-dropper.
per.
Night-walker.

24. One that is a common Eves-dropper; or one that is a common Night-walker, that casts mens Gates and Carts into ponds, and doth other like feats in the Night. *13. H. 7. 12. Winch. c. 4.*

Hue and Cry

25. One that maketh a false Hue and Cry, or doth raise a Hue and Cry without cause.

Watch and ward.

26. One that refuseth to watch, being duly required by the Officer. *Dalt. J. P. 173. 58.*

27. One that abuseth an Officer of the Peace, (be he great or lesse) in the execution of his Office.

Cha. 17.

Abusing of
an Officer.

28. One that commonly breaketh hedges, robs Orchards, or the like. *Dalt. 7.P.173.*

Hedge-
breakers.

29. One that abuseth a *Supersedeas* to a wrong end, as where *A* is bound to keep the peace against *B*, and getteth a *Supersedeas*, and then *B* releaseth him. And after he is arrested for the surety of the peace at anothers suit, and then he sheweth this *Supersedeas*.

One that is acquitted of a Felony, if he be a person of evil name and fame.

Felon.

30. All affrayers by *Dalt. 7.P.109.* who saith, That if any affray be made in view of a Justice of Peace; after the doing, he may record it, and send his warrant to take the offender, and bind him to his good behaviour, or send him to Gaol. *Dalt. 7.P.109.* But this we cannot allow to be good Law.

Affrayer.

31. Bailiffs that arrest a Minister on the Sabbath day in the Church, especially if he be in the doing of divine Service, or in his going to or from Church.

Disturbers
of a Mini-
ster.

32. One that doth not put him or her self to work, according to the order of two Justices of Peace, being poor, and having no visible estate, or way but his labour to live by. *Resol. Judges 1633. Sess. 17.*

33. One that hath been drunk the second time. *4.Fac.5. 21. Fac.7.*

34. The woman that hath had a bastard the second time. *7.Fac.4.*

By Statute
Laws

35. One that having the plague in his house, or upon him, and being commanded to keep in, refuseth

Drunkards
Plague,

Cha. 17.

refuseth to obey, is to be bound for one year
1. *Jac.* 31.

Disturbers
of Ministers

36. One that doth wilfully disturb a Preacher
in his Sermon. 1. *Mar. Par.* 1. *ch.* 3,

Destroyers
of Fish-
ponds.

37. He that destroyeth a fish-pond, or that
stealeth fish out of ponds, or Deer out of Parks,
or killeth or hurteth Conies or Warrens, or
that taketh Hawks, or Hawks eggs out of ano-
thers ground, is to be bound for seven years
5. *Eliz.* 21. 3. *Jac.* 12, 13.

Church.
Disturber
of Justice.

38. One that disturbs the execution of the
Statutes against rogues, and for the setting of
the poor on work. As such as put out such poor
out of their Parish, that ought not to be put out.
39. *Eliz.* 4. or help to convey away the putative
father or mother of a bastard childe likely to
be chargeable to the parish.

Nowl

39. One that reporteth false news against
Westm. 1-34. 2. *R.* 2. 5. *Young*, 22.

Felon,

40. One that is attainted for felony, and hath
his pardon, is to be bound before the Sheriff,
and Coroner. 12. *Ed.* 3. 10. *Dalt J. c. P.* 236.

Justices of the Peace may bind a man to the
good behaviour, for attempting to rob a man,
break a house, attempting by force or fraud to
abuse and deflowr a woman: One that doth
haunt lewd houses, or lewd and suspicious
company, theevish or whorish. Also he may
bind men to be of good behaviour, for sitting
all a night drinking, cutting their ears to bleed
them in the drink to drink it, casting beer in
one anothers codpeece, eating a hat, and such
like frolicks: And many other cases. And this
being an act and power left much to the dis-
cretion of the Justice of Peace, and being a
ready

ready and sharp remedy, I think the Justice of Peace shall do well, especially in these times wherein offences so much abound, to make more use of it, and especially in case of crimes, where either other remedy faileth, as for slandering, as for such words, as for the speaking whereof no action lieth: for this tendeth to the breach of the peace; or the remedy is either for chargeablenesse, or tediousnesse, worse than the disease, as for disobeying the Sessions orders, or Justice of Peaces warrant, as in bringing in the Kings Bench, or Marshalsey; or Mariners, or maimed Souldiers money, or the like. For if a man deserve to be bound for a contemptuous word or carriage to a Justice of Peace, which concerneth none but himself, *a fortiori*, he may be bound for a contemptuous deed by neglect or sleight of the warrent or Order of all the Justices of Sessions, or of any one, or more of them out of Sessions, which may concern many, as the payment of the County money, or the like: wherein if there be no remedy but by indictment, how this will sute to they malady, we Justices do know by sad experience enough. For my part therefore, in these and such like cases, as I find no remedy like to this: so I do and shall use none more than this. See *Dalt. f. 29.*

1. Albeit it be not usual for one Justice of Peace, to require or take surety of the good behaviour, but to do it at a Sessions, or at the least at a sitting of two Justices of Peace, or more, and at the suit of divers men of credit, and upon Articles exhibited also; yet any one Justice a lone out of Sessions, and of his own motion,

Sess. 5.
Who may
do it, and
where and
before
whom it is
to be done,

Cha. 17. motion, or at the suit of one man, having matter proved before him to ground it upon, he may do it. But it concerns him to be cautious for if the matter be false, the party hath no remedy for this wrong.

2 The Surety of the peace is usually granted and taken by one Justice of peace, and then out of Sessions.

Regula.

3 One Justice of Peace (as some say) may require it of another Justice of peace. But we cannot agree to this, for it is against the Rule, *Inter pares non est potestas*, (i. e.) amongst equals they have no power one over another.

4 A Justice of peace may grant it against his own wife. A Constable may take sureties of the peace, of fray-makers, but upon no pain that shall be by obligation, which may not be but in a certaine summe. 3. Hen. 4. 9. 10. Ed. 4. 18.

5 The disturbers of the execution of the Statute about Rogues, and the poor, must be bound to the good behaviour by any two Justices of the peace. 39. Eliz. 4. Dalt. J. P. 154. As Dalton affirmeth; but the Statute is indefinite, they shall forfeit five pounds, and be bound to the good behaviour. 39. Eliz. 4. And so it is for him that hath the plague, and refuseth to obey the Officers command Stat. 1. Jac. 31. And so it is in the Statute of 7. Jac. 4. Shee that shall have a bastard the second time, shall be sent to the House of Correction, till she put in good Sureties for her good behaviour not to offend so again; and this it seems must be before two Justices of the peace.

6 The disturbers of Preachers, stealers and destroyers of Fish, takers of Hawks and their eggs, hunters and killers of Deer and Conies in Warrens, and the like, are to be bound to the good behaviour in the Sessions, and cannot be bound elsewhere. *Dalt. F. P. 235, 236.*

7 The Popish Recusant, and he that comes not to Church in twelve moneths, is to be bound to the good behaviour in the Kings Bench, and not elsewhere. But at this day it seems no man is to be bound any where for not coming to Church, for the Law is changed in this. 23. *Eliz. 1.*

9 He that is attainted of Felony, and hath his pardon, is to be bound to the good behaviour before the Sheriffe and Coroners, who are to return it in the Chancery. But the Judges usually take it at the time of their acquirall. *Dalt. F. P. 236.*

In all other Cases, as for Drunkenness the second time, and the rest, any one Justice of Peace may require or take it.

1 It may be had for, or against any Spuall or Lay persons without distinction: but it cannot be had against any Peer of the Realm but by a suit to the Lord Keeper.

2 The Wife may have it against the Husband or another. The Husband or another against the Wife, but the Wife must be bound by Sureties, not by her selfe.

3 A Justice of Peace may have it against his own Wife.

4 It may be had for, or against one that is attainted of Treason or Felony, or in a *Præmunire*,

Self. 6.
Who may demand and have it.
And against whom it may be had.

Cha. 17. *nire*, convict of Heresie, or abjured.

5 It may be had for, or against a Justice of Peace, Sheriffe, Coroner, Eschetors, or other Officer. And a Justice of Peace may demand it of his Fellow against another man, or another man may demand it of a Justice of Peace against his fellow Justice. But without doubt the Justice cannot compell his fellow Justice.

6 A drunken man may desire it, or it may be desired against him. *Dalt. 7. P. 202.*

Mutus.

7 A dumb man may desire it, And it may be desired against a man that is dumb, and not deaf. And he must be bound by others. But it cannot be had for or against one that is borne dumb and deaf, or made blind and deafe accidentally, except he have more understanding than ordinary.

Infant.

8 An Infant may desire it, or it may be desired against him, if he have discretion. But he must be bound by others.

9 A Villain may have against the Lord, or the Lord against the Villain,

10 It may be had for an Alien in amity with the State, though he be not made Denizen; but not for an Alien in enmity with the State, that is not made Denizen; nor for an Infidel, Pagan, or Jew.

11 A Lunatick may crave the Peace and have it; and a mad man that hath his *Lucida intervalla*, may desire it, or it may be desired against him. But another man that is mad always, or *de non sanâ memoria*, can neither be bound, nor demand Bond in this Case. But the Justices, if they see cause, may take Surety

ty for his safety of their own discretion,

12 It may be had against an Excommuni-
cated person, but not for him.

13 It may be demanded and had against an
impotent man, for he may procure another to
break the peace.

14 Or against a Juror at Sessions, but it is
best to forbear to bind him till the Sessions be
ended,

15 It may be had against any person that
may have it.

For the manner and order of granting the
peace or good behaviour, these things are to be
known. 1. It lieth in two things. 1. The pre-
cept. 2. The Execution: wherein is 1. The
serving of the precept. 2. The taking of the
recognizance. It may be required by word a-
gainst one that is present. The Justice may
command the Sheriff, his own, or any other
indifferent man, or the constable, to take
the party into his custody; and if he refuse to
find Sureties, to carry him to prison. But
if the party be absent, he must send his War-
rant under his hand and Seal, or his hand at
the least. 2. This Warrant must contain
the cause, and at whose suite. See in *Dalt.*
f. P. 101.

Sec. 7.

The manner
of granting
it, and how
it must be
done.

The war-
rant,

In serving of the Precept, these things are to
be known. 1. If it be made to two or more,
one of them may execute it. 2. If it be directed
to the Sheriff, any one of his known under offi-
cers may execute it without any Warrant from
the Sheriff, but so may not others. 3. And
it be directed to a Bailiff, or Servant of a
Justice of Peace, or other that is no Officer,
they

The serving
of it.
Officer.

Cha. 17.

they must do it themselves, and cannot command others. 4. Whosoever do it, is to do it thus. He is first to acquaint the party with the matter before he arrest him: and desire the party to goe with him before a Iustice of peace to put in Sureties, and if he yield in reasonable time, he is to do it, and go with him and to see it done. 5. *Eliz. 4. 31. 5.* If he refuse or delay longer than a reasonable time, he must arrest him, and carry him to Gaol: and so he may do it when he comes to the Iustice, he do not put in Sureties, and this he may do without a new Warrant by the first precept. 4. *H. 7. 9.* 6. The sworn or known Officer when he doth execute this Warrant, need not shew it, though the party arrested require it; but another man must shew it, if it be required, otherwise the party may resist him. 7. If the precept be to bring him before the same Iustice of peace that made it (which may be, and must be, if it be by *Supplicavit* required) the Officer must do so. But if it be to bring him before any Iustice of peace of the County, as usually it is, and ought to be, when it is done *ex officio* and not by *Supplicavit*, 4. *Ed. 4. 31.* (as some say) the Officer, not the delinquent shall have the choice to what Iustice of the peace to bring him. *Co. 5. 59. 21. H. 7. 20.* 8. If the Officer do otherwise than his duty herein, he may be indicted, or false Imprisonment may be brought against him by the party. 9. If when the party is brought before the Iustice, he do not do as he may be punished, the Officer is discharged. 21. *H. 7. 22. Dalt. J. P. 196.*

Supplicavit.

In taking of the Recognizance, these things are to be known; 1. If he take it as Minister upon a *Supplicavit*, he must do according to the direction of the Writ. But if he take it as a Judge, he may take what sureties, and bind for what time, and regularly in what sum he pleaseth, but the ordinary sum is ten or twenty pounds. Yet a recusant bound to the good behaviour in the Kings Bench, is to be bound in two hundred pounds. 2. For the manner, it must be thus made-

STYL. The bond is to be to the King.

2. The condition usually is to keep the peace or good behaviour against all men; and especially *I. S.* till the next Sessions, and then to appear: this is the best Form. But if against all men onely, or against *I. S.* onely, it be to keep the peace, &c. and not to appear, or to say not when, or before whom to appear, or if it be to appear at another, not the next Sessions, or to keep the peace and set down no time, or for a year, or for life; these are good. *Lamb. J. P.* 103, 104.

But if the condition be to do any thing else than to keep the peace or good behaviour, the whole bond is void. *Dalt. J. P.* 211.

2H. 7. 3.

If no time be set down, it shall be taken for his life that is bound.

If no time be set down when to appear, the Obligor may appear at any time, but it is safe to appear the next Sessions. If it be not set down before whom, he may appear before any Justice of peace. *Dalt. J. P.*

211.

Cha. 17

The taking of the Recognizance

SeH. 8.
How Recognizance must be made, and how it shall be taken.

Cha. 17.

Sect. 9.

What must
be done
with the Re-
cognizance
after it is
taken.

Release.
Certificate.
Superse-
deas.

3 For the disposall of the Recognizance, these things are to be known, 1. the Recognizance, whether taken by Writ, or *ex officio*, must be sent to the next Sessions, to the end that the parry may be called (if the condition be for his Appearance) and his appearance or default recorded. 2. If any release be made of it, or *superseas*, so that it be discharged, the Recognizance must be certified with the Release, and the *superseas* annexed. 3. And albeit the King had, or any of the parties had died before the Sessions, yet these things are to be certified to the Sessions. 4. Though the Recognizance be not certified, yet the party must appear: yet if a *superseas* come out of the Chancery, and the bond be ordinary, this will discharge his Appearance. If the party be sick and not able to appear, or if he have any other sufficient excuse, it is best for him to plead it. 5. If a man be bound to appear at the Assizes or Sessions, and the Recognizance be before that time removed by *Certiorari* into the Chancery or Kings Bench, this will discharge his appearance. *Dalt. J. P. 237.*

6. The Justices of peace at Sessions are to call the party conusor, and if he do appear, and the Prosecutor appear also, and he be willing to discharge the Conusor (if it be of the peace) they doe usually discharge him; but if he desire, he may be continued, and shew reason, they do continue him. If the prosecutor do not appear, they do usually bind him over two or three Sessions. If the condition be generall against all men, and not against any person in perticular, they do

ally make proclamation, and then discharge them. *Lan. I. P. 109. Dalt. I. P. 214.* If he were bound by the Justice of peaces discretion, he may at his discretion discharge him, unless any law do limit him how long he shall stand bound. 7. Where the Justice hath taken bond, either *ex officio* or otherwise, he is to give him a *superfedeas* against all other Justices that he be no further troubled. *Dalt. I. P. 216. 236.*

1. To do any such as before, for which the surety of the peace or good behaviour may be granted, as maliciously to threaten to kill, beat, or imprison another, especially the party, at whose suit it is granted, is a cause of the breach of the peace, and forfeiture of the bond. *Poulton de pace, Lamb. 7. p. 114. 32, H. 6. 18. 12. E. 4. 35.*

Surety of the peace cannot be broken without some act, as an affray, battery or the like but the surety *de bono gestu*, consists chiefly that a man demean himself well in his port and company, doing nothing that may cause a breach of the peace, or putting any in fear or trouble. 2 *H. 7. by the Judges resolutions.*

2 To do such an act, or procure such an act to be done, which is a breach of the peace: as to do Felony against the person, beat another, imprison, strike, or assault him, by offering some hurtfull act or thing, or some fearfull speech, or thrust him maliciously into the water. *Lamb. I. P. 126, 127.* Or make a riotous Assembly, *Cook. 14. Inst. 181.* send a challenge to fight. 7. *N. 4. 34.* Or offer to another any injurious or violent handling by mis-treat-

superfedeas.

SECT. II.

What shall be said to be a breach of the Peace or good behaviour.

And cause of forfeiture of the Recognizance, or not For the Peace.

Cha. 17. ings of the person of another. To make an affray, which may be either by going with unusuall Armour or Weapons *in terrorem populi*, or by a mural Quarrell, and going together by the Ears of many together, *Lamb. I. P. 127.* All these things are breaches of the peace.

But for a Master to correct his Servant or Scholar moderately, Parent his Child, Gaoler his prisoner, or the like, *Dalt. I. P. 220.* not for any man that doth any Act in the Execution of Justice, is no cause of Forfeiture of such a bond, nor the defensive beating of another, to save himself, or his. *Lamb. I. P. 127.* So the Lord his Villain. 33. *H. 8. cap. 12.* So a friend may beat his mad friend for reclaiming of him. *Stam. fol. 13, 14, 15. 14. H. 7. 8.* Nor to take away another mans goods or ward wrongfully, or do Trespasse in his lands or goods, or to disseise him of his land; for all these things are justifiable. *Lamb. I. P. 128.*

Indiement
doth not lye
for a breach
of a Recogni-
zance,
but a Scir-
fac. ought
to be
brought up-
on it. Co. 4.
Inst. fol.

129. If one that is bound to the peace be assaulted, and he beat him that made the assault, this is no breach of the peace. 22. *Ed. 4. 26.*

27. Surety of peace is not broken without a
assray, or battery, but surety of good behavi-
our may be broken, by a company of people,
and by their armes, and the like.

But he that is bound to the peace ought so to
demean himself in his deportment and compa-
ny, not doing any thing that should cause a
breach of the peace or put the people in feare.

2. *H. 7. 22.*

A man is bound to the peace and procures another to break it; this is a forfeiture. *Brook. peace, 20.*

A man is bound to keep the peace, and threatens *I. N.* being present; this is a breach of the peace. Contrary by some, if *I. N.* be absent at the time of the threatening. *18. Ed. 4. 28.*

To do such an act for which the Surety of the good behaviour may be granted, is cause of Forfeiture of this Recognizance. As 1. Whatsoever will cause a forfeiture of a recognizance of the peace, will cause a forfeiture of this bond. 2. So to say or do any thing that may stir up the breach of the peace. 3. To go with an extraordinary number of men attending him, or the like. *Lamb. I. P. 116.* 4. To go or ride armed extraordinarily that it breeds fear in the people. 5. If the binding be for an offence against the Statute, if he shall again offend against that Statute. *Dal. 7. P. 236. Lam. 7. P. 121.* 6. To be drunken; by Sir *Nicolas Hide. Dalr. I. P. 236.* 7. To swear after one is bound to the good behaviour: for swearing is a breach of this bond. But scandalous words, especially if they be not actionable, as to say, Thou art a Pelter, Lier, Drunkard, Knave, or the like; nor ordinary trespasses done to man's lands, goods or chattels, make not a breach of the good behaviour. *Cook. 4. part. of Inst. f. 181.*

Touching the discharge of the party prosecuted in this case, these things are to be known.

1 The proper place of discharging before or after Bond given, is the Assizes, or Sessions, *Dalr. 216.*

Sess. 12. What shall be said to discharge of such delinquents, or not.

Cha. 17.

2 It may in a due manner be released by the party craving it, before or after the breach of the condition.

3 The death of the King, it seemeth, did discharge it. But the release, or death of the party craving it, will not discharge the party when he is in prison. It is doubted by some, whether the surety of the good behaviour (taken upon complaint) may be released by any special person as that of the peace may be. But others think that it may be released by either the Party himself, upon whose complaint it was taken, or by the Justice of the Peace at discretion. *Dalt. J. P. 236. Lamb. J. P. 126. See old Book of Entries, f. 415, 416.*

After the
Bond.

4 If he do performe the condition of the Bond, keep the peace, &c. and appear at the time, which he must do, though the prosecutor do not follow it; a Justice that binds of his own discretion onely till a day, may discharge of his own discretion before the day so it be before the Recognizance be forfeited. *Poulton de Page 19.*

5 If a man be bound for his life, no release of the King, Justice, or party, can release him, *21. Ed. 4. 40.*

6. If the bond be to keep the peace against A. or against all men, especially against A, before the Recognizance is broken, A. may release it before a Justice of the peace, otherwise not. *Lamb. J. P. 110.* And if the party at whose suit it was, die before it be broken, where he is bound to keep it against him, this will discharge it. *21. Ed. 4. 4.*

If a man finde surory of peace and no day

limited, there none may release, but he is bound during life. 21. E. 4. 40. Cha, 17.

If a man break the peace and *scire facias* is awarded against him, there the party may not release the peace. And if he pay the money, yet he shall be committed to prison till he find sureties again, for the principal recognizance is determined so, and he appears to be a trespasser of the Law. 21. E. 40.

The form of a Release of the Peace by the Justice.

Ego prefat. Johannes Thomp. qui supernominato R. ad predictam securitatem pacis inveniendi ex mea discretionem compuli eandem securitatem facere (quantum in me est) ex mea discretionem quarta die maii anno &c. remisit & relaxavit, a cuius rei testimonium. &c.

A Release by the party.

M4. quod. 10 die Junii anno. &c. prefat. E. F. coram me I. K, uno Justice &c. & gratis remisit & relaxavit quantum in se est precand. securitatem pacis per quod coram me versus prefat. T. D. petition in cuius rei ego prefat. R. &c. dat. &c.

7 Before the forfeiture the King could not release it; and after the forfeiture none but he could do it. 11. H. 7. 12. 1. H. 7. 10.

By the death or resignation of the King, the party principally himself bound to keep the

Cha. 18, the peace before the bond was broken, was discharged, but not by the death of the Mainpernors. 1. H. 7. 2. Dalt. J. P. 119.

CHAP. XVIII.

Of Ale-houses.

Stat. 1.
who must
take Licen-
ses.

Taverns.
Inholders.

Commit-
ment.

FOR the better understanding of the Law concerning Ale-houses, &c. these things are to be known : 1. That none may keep any comon Ale-house, or comon Victualling house, or use commonly to sell Ale, Beer, Cider, or Perry, that is not licensed in open Sessions, or by two Justices of the the peace. *Quorum unus*, 5. & 6. Ed. 6. 2. The Tavernes keeping Victualling, Inkeepers and Victuallers, are within the Statutes as well as Ale-house-keepers ; so that if they offend by suffering tippling ; or selling less for a penny, or two pence, than the Statute appoints, they are to be punished as Ale-house-keepers are. And they are to be bound for keeping of good order, as well as Ale-house-keepers. And the Justices of the peace may require them to take Licenses, and enter into recognizance to keep good order, or else commit them as Ale-house-keepers. And all those Innes which werre erected since, 5. Ed. 6. and not Innes before, must have License, and be bound as well as others, *Crom. J. P. 119.*

Dalt. 1. P. ch. 7. f. 37. 1. Car. 4. 3. The Ju- Cha. 18.
 stices when they license Ale-selling to a man, Recogni-
 must take bond and surety of him against the zance.
 using of any unlawfull games, and for the keep-
 ing of good order, which they must certifie
 at the next Quarter Sessions *sub pena 3. l. 6. s.*
d. 4. When they commit any man 3 dayes
 for selling without license, they must ere they
 deliver him, take bond with two Sureties,
 that he shall not offend again. And this re-
 cognizance, discharge, and offence, they must
 certify at the next Quarter-Sessions. And this
 Certificate will be a sufficient conviction in law
 to make him liable to the twenty shillings fine
upon 5. Ed. 6. 25. 5. If two Justices of the
 peace discharge an Ale-house-keeper of selling
 of Ale, and two others after out of Sessions, al-
 low him again, it seemes the first two may com-
 mit him. So if he be convicted of any of the
 offences in the Statutes, by which he is dis-
 abled, and is or is not suppressed for it: if he be
 licensed within three years after, the License is
 void, and he to be punished as one unlicensed.
 And he that is convict for selling lesse then the
 Assize, for suffering tippling, or that doth tipple,
 or is drunk, is disabled to sell again for 3 years,
 and being put down by two Justices, he cannot Feme co-
 be licensed but in open Sessions, *Dalt. 1. P. ch. 7.* vert.
1. l. 9. 4. l. 21. 5. l. 6. 6. If a woman that
 hath a husband, sell against her husbands will,
 they may be both punished, his purse, and she, if
 the Justice think fit, may be imprisoned till
 she finde Sureties for the good behaviour, and
 that she will not sell again. *Dalt. 1. P. in ch. 7.*
 7. He that is not licensed, may be punished by
Good Be-
haviour.

Cha. 18.

Tippling.

1. *Ed. 6. 25. or by 3. Car. 3.* But he cannot be punished upon both, that is, if he be committed and pay his twenty shillings, he cannot be sent to bridewell. If he be sent thither, he is not to be committed to Gaol and pay twenty shillings; and yet he that is unlicensed may be punished for suffering tippling, or breaking the Assize, as those that are licensed may be, *Dalb. I. P. in Chap. 7.* 8. The Traveller and other necessarily accompanying him, as invited by him during his necessary abode in the Ale-house; Handicraft man, Workman, and Labourers, that are there for an hour at dinner time and such as do sojourn and lodge there, and such as are licensed by two Justices of the peace, are not to be accounted Tipplers with the Same. But all other men living in the same place, or else where, except the stranger himself, are to be accounted Tipplers, *Dalb. I. P. in ch. 7. 1. Car. 4. Iac. 5. 1. Iac. 9. 9.* Brewer may not sell more Ale or Beer to unlicensed Ale-house keepers, than what will serve for their own use, *4. Iac. 4. 10.* Selling of Ale at Fairs, is not against the Statute, *9. Ed. 6. 25. 3. Car. 3.* 11. All the forfeiture of all these offences upon *4. Iac. 7. 3. Car. 3. 21. Iac. 9.* are given to the poor of the place where the offence is done: and so is the one half upon the Statute, *4. Iac. 4.* and must be delivered to the Church-wardens, who must account for it. But the twenty shillings on the Stat. of *5. & 6. Ed. 6.* doth go to the State. 12. It is held first hear the parties offending in these cases, before the forfeitures be levied in, *Dalb. I. P. ch. 12.* If any Ale-house keeper shall be lawfully convicted

convicted of any offence against any breach of 1 Jac. 9. & 4. Jac. 5. he is for the space of three years next after the conviction, to be utterly disabled to keep any such Ale-house, 1 Jac. 10. 14. If a man be punished on 1 and 6. Ed. 6. that is, committed and hath entered into bond, and hath paid 20. s. he cannot be punished on 3. Car. and so on the contrary part.

There must be two Justices of Peace, *Quorum unus*, to licence a man to keep a common Ale-house, and to take Recognizance of him for his keeping of good order, which they may do according to their discretion. And if they please, they may licence some Ale-houses to sell to the poor out of doors onely, *Resol. Judges 1633.* And there must be two Justices to remove, discharge, and put down an Ale-house where they think meet, and to commit to prison without Bail, such as use to sell Ale without licence, or contrary to the command of two Justices of peace, up 15. Ed. 6. 26. And to take a recognizance of him that he shall not sell again, and to certifye this offence and the Recognizance at the next Quarter Sessions, where he is to be fined twenty shillings. And there must be two to license Labourets to remain in an Ale-house, &c. But any one Justice of peace upon oath of two witnesses, or confession of him that oath of his own head without license, keep a common Ale-house, or Tipling house, or use commonly Ale-selling, may make his Warrant to the Constables or Church-Wardens of the place where the offence is done, to levy twenty shillings by distress, and appraisement and sale of goods,

Secl. 2.
The power,
and duty of
a Justice
of Peace
Herein
of Sessions.
Selling
without
License.

Warrant.

8 Cha. 18. goods, after three dayes returning the overplus; and for want of distresse, or non-payment in six dayes, to whip, or cause him to be openly whipped, and commit the Officer neglected his duty, to prison, till he do it, or pay forty shillings. So also any one Justice for a second offence herein, may send the Ale-house to the house of correction a month; and for a third, may send him thither untill he be thence delivered by order from the Quarter Sessions. 3. Car. 3.

Suffer tippling.

Constables. Church-wardens.

Commitmen.

Sellings under measure.

Certificate.

Also any one Justice of peace upon his own view, oath of one witnessse, confession of the party, or upon his oath after his confession against him that shall suffer any person forbidden by the Statute. to remain tippling in his house, may convict him; which done, the Constables or Church-Wardens of the place where the offence is done, may *ex officio*, without any Warrant from any Justice of peace, levy ten shillings by distresse and sale of goods, returning the overplus. And for want of distresse, the Justice of peace may send the offender to Goal till he pay it. So he upon the confession of the party, or oath of one witnessse against the Innkeeper, &c. that he doth sell lesse then a quart of the best for a penny, or two quarts of the small for a penny, may convict him for the twenty shillings forfeiture; which done, he must be proceeded against, as in the last. And if in these two last cases the officer do not levy the money, or within twenty dayes certifie the want of distresse to the Justice he may send his Warrant to some other under hand and seal, to levy forty shillings of the officers goods by distresse.

distresse and sale, after six dayes, returning the over-plus. And for want of distresse, he may send the offender to Gaol till payment be made of the forty shillings. 1. Iac. 9.

Any one Justice of peace may also upon his own view, oath of one witnessse, confession of the party, or upon his oath after his confession against him that shall be in any Inne or Ale-house tippling, and is forbidden by the Statute, may in case it be not paid within a week after conviction, to the Church-wardens of the place where the offence is done, make his Warrant to the Constable, or other inferior officer of that place, to levy three shillings four pence of his goods; and if he be unable to pay it, to put him in the stocks four hours; which if the officer doth neglect to do, the Justice may send his warrant to some other to levy by way of distresse, ten shillings of his goods that is the officer.

Stocks
warrant.

So also any one Justice on his own view, oath of one witnessse, confession of the party, or upon his oath that hath confessed it, against him that shall be drunk, may levy the five shillings forfeiture, in the same order, as in the last for Tippling. And if he be unable, to put him in the stocks six hours: the officers neglect to be punished as before, 4. Iac. 4. It seemes also that the Justice may for the second offence, bind the offender to the good behaviour, 4. Iac.

Drunkennesse,

Good
behaviour.

5. 21. Iac. 7.

CHAP.

CHAP. XIX.

Of Bastardy and Incontinency.

ANd as to Bastardy, these things are to be known. 1. That any Justice of Peace of the County, as well as the next and nearest to the place, may take order for the security of the parish, &c. 3. Car. 4. 2. Justices of the peace are not to meddle to make order for the securing of the parish when the child is dead; or if it be living, but upon complaint of some of the parish. But they are to see the offenders punished for their incontinency. 3. The order for the keeping of the child must be first made by two Justices of Peace, and therefore the Sessions do alwayes referre it first of all to the two Justices of peace. 4. If the two Justices of peace cannot agree upon the order, it must be referred to the Sessions. 5. The mother may be examined upon oath touching the reputed father. 6. Where the parties doe marry together before any order made, the Justices of peace do not use to intermeddle; yet here seemes the parties may be punished for their incontinency. But inquire well. The Matrimoniall subsequent taketh away the crime before, if the parents do not appeal to the Sessions, nor obey the order of the two Justices of peace under their hands, upon notice, they are to be committed to the Gaol till they do, or pay

Order.

Marriage.

Commitment.

safety to do it, or else to appear at the next **Cha. 19.**
Quarter Sessions, and stand to the order of the

Justices of the peace there, if they make any, or
else to the first order of the two Justices of
peace, under their hands. 8. If the order of
the Justices be revoked, it must be done at the
very next Quarter Sessions, otherwise the first
order will stand. And therefore if the Justices

at the next Sessions, affirm the order, the Ju-
stices at any Sessions after cannot avoid it, &
see contra. Hill. 9. *Iac. B. R.* 9. The wo-
man is not to be punished with any corporall
punishment, till she be delivered and recovered.

And then for the first offence she is to be sent to
the house of Correction for a year; and for

House of
correction.

the second she is to be sent thither untill she
can put in sureties for her good behaviour, and
not to offend again. And then it seemes she is

Good beha-
viour.

not to be punished with any corporall punish-
ment upon 18. *E. 10.* The child is not to be sent

with the mother to the house of correction, un-
lesse it suck. 11. If the child be born eleven

dayes after the forty weekes after the death of
the father, it is not lawfull: So if it be born af-
ter the forty weekes after the time the woman

charged the man to have known her, it shall not
be accounted his child.

Any one Justice of Peace may bind to the
good behaviour the putative father of a Ba-

Sec. 21

rd child, like to be chargeable to the parish
before or after the birth of the child, *Dalt. 1.*

The power
and duty of
the Justices
of peace out
of Sessions
herein.

11. So also may one Justice of peace
before or after the birth of the child, bind over

the good behaviour and next Gaole delivery,
at Quarter Sessions, such as shall have any hand

Cha. 20. in the sending or conveying away of the putative father or mother, whereby the child is left to the charge of a parish, 18. *Eliz.* 3. 7. *Iac.* 4. But there must be two Iustices of peace, *Quorum unus*, to take order for the relief of the bastard, ease and safety of the parish, corporal punishment of the mother, and reputed father, to commit them till they obey the Order, if they make no appeal to Sessions; and if they do, to bind them to appear there, and to obey the Order of the Sessions; and to send the Woman to the house of Correction; for no one Iustice of the peace may do either of these things. 18. *Eliz.* 3. 7. *Iac.* 4. *Dalt. l. p. cap. 11.*

Order.
Committ-
ment.
Bind over.

CHAP. XX.

Of the Poor, and Rogues.

Sect. 1.

Sect. 2.

Overseers
of the poor,
and their
office.

For the opening of the Iustice of Peace Office about the poor, it is necessary we premise something of the Over-seers of the poor, and their office; touching which take these things: 1. The over-seers of the poor are certain officers appointed yearly to be joyned and assistant to the Church-warden of the Parish in the oversight and ordering of the poor of the parish: and they are to be chosen and made by two more of the Iustices of the peace of the County (whereof one of them must be of the *Quorum*) dwelling in or near the

parish or Division, &c. who are yearly under their Hands and Seals at Easter, or within a moneth after to appoint four, three, or two substantiall Householders (according to the greatnesse of the Parish) to be joyned with the Church-wardens of the parish, and all these together are to look to the poor of the parish,

2. And in this office the Church-wardens of the place have an equall Authority and Charge with the Over-seers of the poor; and therefore howsoever it be the common course in most places with the Church-Wardens to neglect it altogether, and not to meddle at all with it; yet this is a common neglect punishable upon the Church-Wardens, and fit to be redressed. But if there be but one Church-Warden within the parish, this doth suffice, and the overseers and he together may execute the office well enough.

3. The major part of them without the rest may do any thing belonging to their office.

4. They must have the consent of two Justices, *Quorum unus*, either in particular, or in generall, to every thing they do in their office. *Diall. F. P. cap. 40.* And yet it seems they may set up and exercise a Trade by the consent of one Justice, where there are not two Justices within the Limits. 3. Car. 4.

5. The office of all these men lieth in these things. 1. In generall; they are to take order with the consent of two Justices of the place, to set their poor a work; and if need be, for that purpose to set up a Trade; place out Appren-

Self. 3.

In setting the poor to work

H 2

Cha. 20.

tices, relieve the impotent, and such as cannot work, or cannot live by their work. But more particularly: 2. They with the consent of two or more Justices may set up and use any Trade, onely for the setting a work, and reliefe of the poor of their own parish, without breach of any Statute. 3. They are to set to worke the children of such whose Parents shall not by them be thought able to keep and maintain their children, and such persons married and unmarried, as having no meanes to maintain themselves, use no ordinary and daily Trade of life to get their living by; and all those that cannot get work elsewhere. And if any person so appointed by them to work, shall refuse to do, or any others that are able, if they refuse to work for the wages assessed, he may be sent by any Justice of peace to the common Gaole or House of Correction, not to the place of Birth, or last dwelling.

House of
Correction,Sect. 4.
In binding
Apprentices.

4. They or the more part of them, with the consent of the Justices aforesaid, may and ought to bind forth and place to be Apprentices, the children of such whose Parents shall be by them or the greater part of them thought to be unable to keepe and maintain their children, but they may not bind any other mens children so; and they unto whom they are so bound, may and must receive them, and keep them as Apprentices; in which particular these things must be marked: 1. They may binde them to be Weavers, Masons, or any such like trade, or they may bind them to husbandry or Huswifery. 2. It is said, they may bind any above seven, and under thirteen years: and the

man-

man-childe may be bound until he be of the age of twenty four years, and the woman child untill she come to the age of twenty one years, or be married. 3. They with the Justices of Peace may compell any man they think fit, to take such a poor child of the same parish to be his Apprenrice, and that without any money at all: howbeit in this case, it is meet some respect should be had; for if the child be young, and the party to whom they would place him not very able, they may give money if they will, and it is fit that some money be given as the Overseers and the party can agree; and if they cannot agree, as the next Justices of Peace, or as the Justices of Peace at the Sessions shall set down. *Resol. of the Judges.* 4. All men that have or may have use for servants, are bound to receive such Apprentices themselves, or contribute towards the placing of them with others. And albeit a man be not a Trades-man but a Knight, Gentleman, Clergy-men, or Yeoman, and albeit he do not keep house, but be a Sojourner, if he use Husbandry, Clothing, Grasing, or the like; or howsoever his case be, if by his Calling and Profession he must entertain and use servants of like quality, he may be compelled to take such an apprentice. *Res. of the Judges.* 5. If a wealthy man live so privatly that he keep few or no servants, and leadeth such a life that he hath no need of such a servant, yet he may be compelled to take such an Apprentice himself, or to give money towards the placing of him with some other. And this notwithstanding they must bear the ordinary Rates to the poor. *Resol. of the Judges.* 6. If there be not

Cha. 20. Masters enough within the same parish to entertain the poor children there; the Justice of the peace may compell them of other parishes within the same Hundred to take them; and if there be not enough within the Hundred, the Justices of the peace at the Sessions may compel them of any parishes within the County to take them. *Resol. of the Judges.* 7. They may be bound to a man in regard of his ability, or in regard of his Farm, and in the last case it seems reasonable that he go with the Farm. *Dalt. J. P. pag. 115.* 8. This binding must be by Indenture. 9. The indentures made by the Justices, Church-wardens, and Over-seers in this case, and the binding by them are as effectually to all purposes as if the children were of full Age, and by Indenture of Covenant did bind themselves. 10. All such as are so bound according to 43. *Eliz.* may be safely received as Apprentices. *3. Car. 4. 11.* If any man refuse to accept of an Apprentice being thus placed to him, he is by the Justices of the Peace to be bound to appear at the next Sessions, or Gaol delivery; and if he refuse so to do, he is to be sent to the Gaol, till he do so; and if he be bound to appear at the Sessions, and do so, and then refuse (without a sufficient excuse to be allowed by the Justices of peace) then he is by the Justice of peace to be bound to the good behaviour; or if he refuse so to do, to be imprisoned till he do so, and withall he may be indicted and fined for his contempt. 12. If a speciall Rate be set on a man to help bind Apprentices, it may be levied on other Rates. *Resol. of the Judges.* 13. If the Parents of such poor children refuse to suffer

*Resol. of
the Judges
1633.
Good Behaviour.*

their children to be bound Apprentices, or intice them away being bound, the Parents themselves may be sent to the house of correction.

Señ. 5.

In relieving the poor, and what poor they are to relieve.

5. The next main part of their Duty is, to give releif, provide Houses, and help them that are poor, and not able to live by their work. For this we must know that there are three sorts of poor.

1. Such as are poor by impotency, as 1. The aged, decrepit persons, that are past labour. 2. The Infant, fatherlesse, and motherlesse, not able to work. 3. The person naturally disabled in wit, or member, as the Idiot, Lunatick, blind, lame, &c. 4. The person visited with sickness, who thereby for the time is impotent. All these being impotent and not able to worke, are to be found and provided for by the Overseers of necessary relief.

2. Such as are so by casualty, as 1. He that is casuallly maimed in his calling; as the Souldier, Labourer, &c. 2. The person that is decayed by fire, water robbery, suretiship, &c. 3. The poor man over-carged with children. All these, and such like, having no sufficient means to maintain themselves, are to be holden, and set on work by the Overseers, and being not able to live by their work, are further in charity to be relieved in some reasonable proportion according to their wants. And these impotent and none others are to have houses provided for them, *Resol. Judges temp. Q. Eliz. Señ. 6.* For this they may erect a Cottage with the Lords consent, *43. Eliz. 2.* in any wast ground, or place Inmates in houses there, *Resol. Judges 1633.*

Cha. 20.

3. The thriftlesse poor, as 1. The riotous and prodigall person, that spendeth at play, drinking, &c. 2. The dissolute person, as Strumpet, pilferer, &c. 3. The slothfull person that doth refuse to work, or doth wilfully spoil, or embezzle his work. 4. The Vagabond that will abide in no service or place. 5. Such as will work, but not for the wages taxed or usually given. And for all these later sort, the House of correction or common Gaol is the fittest place; and to the House of correction is he to be sent and not to his place of Birth, that will not work at the wages assessed or usually given; but if they have able bodyes, they are to be compelled to labour: for the rule of *Christ* is, That such as *will not labour must not eat*, 2 *Thef.* 3. 10. And yet if these prove unable to work, then it seemes they must have Relief from the parish as well as others.

Resol Iudg-
comp. Quad.
Sect. 6.

2. They are not to take care for Houses or other Relief for such as are able to work, and have or may have work; nor yet for their children, for they are by their work to maintain them also: but if such be overburdened with children, it will be good for the Over-seers to place some of their children Apprentices; and if these cannot have work: the Over-seers must procure them work, for none may beg in the high-ways within or without their own parish, nor at any mans doors without their parish, nor at any mans doors within the parish, without order of the Over-seers of the poor. And therefore such as are able when their time is out of their houses, and services they must provide themselves

themselves within new. *Resol. Judges temp Q. Cha. 30.*
Eliz. Sect. 4.

3. Nor are they to take care of such as are able to live. And therefore if any such person travell thorow a parish with children, and the father die and leave them; in this case the parish is not bound but in charity to relive them.

4. They are not to take care to relieve Rogues, for they are to be sent away.

4. They must take care for such poor as have parents, or grand-parents, children, or grand-children, able to relieve them, as well as others, till they can be forced to help them: for so they may be by Justices at their Quarter Sessions.

6. They must take care for all such as are lawfully sent to, and settled amongst them, if they prove impotent. But by the way, as to the point of Settlement of poor people, these things are to be known: 1. That this is in the power of the Justices of Peace at their Quarter Sessions onely and no where else, except it be in the case of Rogues: And it is left much in their discretion to be done according to the circumstances of the Case, by Sir *Francis Hervey Inst.* 1629. 2. Every one is to be sent and settled there where he was last rightfully settled.

Settlement
of poor.

And for this we must know: 1. That no settlement can be legall that is brought to passe by practise, composition, or agreement. And therefore if a parish will hire a man born in A, but settled with them in that parish, to go and wander in D and beg, that he may

Cha. 20. may be sent to *A*, and he do so, this may not be a good settlement in *A*, and he may be sent again to his parish from whence he came.

2. No settlement can be legall that is brought about by compulsion: And therefore if a man born in *A* be settled in *B*, and he is there thrust out and kept out of a house, so that by this, and not having work he be necessitated to wander and beg in *D*, and thence is sent to *A*, he is not sent to, and settled in *B*, for this was by compulsion.

3. A mistaken settlement is accounted by Law no settlement at all: And therefore if a Rogue be taken, and examined, and saith his Birth is at *D*, and it cannot appear otherwise. But he confesseth truly the last place of his habitation was at *S*, whereupon he is whipped and sent to *S*, and at his coming to *S*, the place of his birth is known to be at *W*, and the rogue doth confesse it, in this case he may be sent to *W*.

4. No settlement can be legall in any parish, when the residence of the party there is so onely obscure and uncertain, in a sculking way, that the parishioners cannot take notice of him: And therefore if a person come there now and then, and lie there in a Barn, or out-house, obscurely and incognito; this shall not be accounted a settlement in this parish.

5. No settlement can be legall in any place where it is not quiet, and uninterrupted, and therefore if the party be continually interrupted by complaint to Justices, or

Warrants, or other disturbances by the Officers, or parishioners of the parish, this will not be accounted a settlement in law.

6. He or she that is in any parish a native (that is) born in the place, or being born elsewhere, hath been there a householder, sojourner, apprentice, or servant for a moneth, or more at one time in peace, without just complaint to remove him, is said there to be settled: But one that doth travell thorow a Town, lodgeth in an Inne there, as an Inmate or Guest for two or three dayes together, or gets into an out-house or barn there, and shifts there for a little time; a childe at nurse with its mother, or another there a Scholler, at School, or at the Univerfity, or one that doth keep a stall in a Market onely, is not esteemed by this to be settled there, and therefore not to charge that place if they become impotent. *Resol. of Judges 1633. Feb. 25.*

7. When a person is unsetled regularly, he or she is to be removed, and sent to the place of his last settlement. But in some speciall cases, as in the case of a Rogue, who is to be sent to the place of his birth, &c. And a wife and children sent after husband and parents, it is otherwise.

8. If any one be once duely settled in a parish, he may not be after removed. And therefore if they have houses or services there, that their time is out, they must get new if they be able, otherwise the parish must relieve them.

9. They that are sent to any one parish from another,

Cha. 20.

another, must be offered to the Church-wardens and overseers of the poor of the place, and not to any other person.

10. If any be sent to any place contrary to these Rules, they may be sent back again to the place from whence they came.

11. Those that are sent as Rogues, may be sent by a generall passe, but from parish to parish. And then they must be tendered to one of the Overseers or Church-warden of the parish. If any convey them otherwise, or put them out of a place that ought not to be put out, or refuse them being duly tendered, or any other way hinder the due convey of Rogues, they do forfeit the pound.

12. None can be sent (by the parishioners) out of their parish but a Vagrant. *Resol. Judges R. Eliz. 7.*

Of a Rogue.

HE that is taken and punished as a Rogue, be it he, or she, is to be sent to and settled in the place of his birth, and there to be received, if it be legally done. But if the place of his birth cannot be known, then he must be sent to the place where he last dwelt for a year, before the time of his punishment. And if that cannot be known neither, then he must be sent to the place through which he last passed without punishment, and from thence to bridge-well. 39. *Eliz. 4.*

And if the Rogue be a man, and he hath a wife that is a Rogue also, they must be conveyed and settled together.

If the wife alone be a vagrant Rogue and
with a husband living in another parish in a
house, or as an Inmate, or as a servant onely; it
is said the wife must be sent to him, but this I
take to be after she is whipped, and sent to
the place of her Birth, *Resol. Judges Elix,*
28.15.

And if the Rogue have children above seven
years old Roguing about with him; they must
be sent along with him to Bridewell if they
be thither. But if they were born in severall
places, it seems afterwards they must be sent to
those severall places. But if it be a woman
Rogue, and she have a child in the nature of a
house-child, that must remain with her. But if
be out of this condition and under seven years
of age, then it must be sent to the place where
she was last settled; if above seven years, to its
place of Birth.

If a Rogue be taken and examined, and saith
the place of his Birth is at *D*, and it cannot ap-
pear otherwise, but he confesseth truly the
place of his habitation was at *S*; where-
on he is whipt, and sent to *S*; and at his
coming to *S*, the place of his Birth is there
known to be at *W*, and the Rogue doth confesse
to be so, in this case he may be sent to *W*,
without any new Vagrancy, *Resol. Judges 1633.*

If a man and his wife be Roguing, and they
have a house in another parish, it is said they
may be sent thither. *Sed Quare* of this, for it
must be then after they be sent to the place of
their birth, &c.

None but vagrants are to be sent out of any
parish,

Cha. 20. parish, to their place of birth or last habit
Resol. Q. Eliz. 7.

And it is said that such as have no means
 live by, and refuse to work for the wages
 dinarily given, that these are not to be
 to their place of Birth, or last dwelling,
 to Bridewell. *Cook. 2. part Inst. 730.*
 yet this is against the expresse words of
Eliz.

If any one do beg in their own pa
 onely, it seemes this doth not make him
 Rogue, so as to be sent to the place of
 Birth. So if he onely wander into the
 parish, and do not beg. But if he beg
 it seems to be otherwise, *Pasch. 7. Car.*
Iustice.

Of a Hus-
 band and
 wife.

THe wife regularly is to be sent to and
 led with her husband where he is
 led, though he be their but as an Inmate
 Servant. And it is said if she be a
 she shall be sent to him, which I
 stand to be meant after she is punished
 that is whipt and sent to the place of
 birth, &c.

If the husband hath a house in A, and
 there by night, but is in Covenant to serve
 master in B, and there he is all the day, ne
 ease she is to continue in A. But if the husb
 take a house in B, she shall be settled with
 husband in B.

The wife of a Rogue if she be Roguing
 him must be disposed of as her husband
 posed of. But if she be no Rogue,

she must be sent to the place of her last settlement, so long as the husband is in bridwell, and then she shall be settled with him where he is settled.

If the husband be dead, and the wife turne vagrant, she is to be sent to the place of her birth, but if she be none, to the place of her last settlement.

It is said that if a man hath a wife that hath a house, and is settled as an Inmate in another town, that the husband is to be sent to her to that place; But this must be warily taken.

So it is said of the wife that hath a husband in another place; who hath a house, or is an Inmate there, she shall be sent to him, *Resol. Judges. Eliz. 16.* which I understand to be after the punishment passed.

It is said in the *Resol. Judg. Eliz. Sess. 15.* That the vagrant wife must be sent to her husband, though a servant in another Town. But *Quere* how this is to be taken? For it seems she must by the Statute of 39. *Eliz.* be sent first to the place of her Birth, or last dwelling, &c. for this is part of the punishment appointed.

All children regularly are to be sent to and settled with the parents whiles they live, who if they be able, are to help to maintain them by their labour.

Nursing children are to be with the mother whiles she is at Bridwell, and children above seven yeres old taken begging

Cha. 20. ing with the parents may go to Bridewell with them.

And if under seven years, they are to be, and be passed with the parents, yea if the parents birth or dwelling cannot be known they must go to the place where they last passed through without punishment, and there be relieved by the labour of their parents in Bridewell, *Resol. Judges. Q. Eliz. 7. & 13.*

If children unsettled have no parents, they be dead or not to be found, they must go to the place of their last settlement, unlesse they become vagrants, then to the place of their birth if above seven years old. But otherwise young children, whose parents are dead and were settled, in that place are they to be settled, set a work and maintained by the places where their parents dwelt at the time of their death, and not to be sent to the place of their Birth. By *Fleming Ch. Justice Dalt. 7. 5.* And albeit they do in this place come to seven years old, or become vagrant, yet they cannot (as it seems) be from hence sent to their place of Birth.

And yet if a woman have a bastard child in one parish, and after go into another parish with it, or become vagrant, and is sent to the place of her birth, in this case it is said, if the mother and reputed father be poor, the child as long as it is nursing must be with the mother after it is to be settled where it was borne, *Resol. Judges 1633. Set. 22.*

And children at nurse with the mother, or another, if they become impotent and like to be chargeable, are to be sent to their p-

reurs, if they have any, if not to the place of *Cha. 20.*
their last settlement or birth in case of va-
grancy.

If the parents of children travell thorow a
Town, and are but Rogues, and there die, or
thence run away and leave their children; this
Town is not bound to keep them nor send
them away but in charity, except they be-
come wandering beggers. *Resol. Judges. Q.*
Eliz. 5.

If a child be duely settled with father or mo-
ther, and they die, or run away thence, it must
there continue, and may not be sent to the
place of his birth. As if a vagrant under se-
ven be settled with the father, and he be
dead, or with the mother where she was
born, or dwelt, and he grow above seven years,
and the parents run away or die, it is not
to be sent to the place of birth, *Resol. Judges,*
Eliz. 13.

If a woman unmarried be hired weekly,
half yearly, or yearly, in one parish, and there
is begotten with childe, and then goeth into an
other parish, where she is settled in service or
otherwise, for 2 or 3 months, and then it is
discovered she is with child; in this case, she
and her child shall be settled in the parish where
she was last settled, and not in the parish where
shee was begot with childe. *Resol. Judges*
1622. 12.

If a travelling woman that hath a sucking
child, be sent to Gaol and hanged for felony;
The childe shall not be settled on the parish
where she is hanged, but on the parish where
it was born, if it can be found, otherwise on

Cha. 20. the place where the mother was taken, by the opinion of Sir *Nich. Hide*, 3. *Car.* But *Quare* well of this. For it seems to me rationally in this, that the Justices use their discretion and consider wisely of all circumstances.

If a woman be delivered of a base child in one parish, go into another parish with her child, or become vagrant, and so is sent to the place of her birth, the child being under seven years old is to be sent to the place of his birth, and not settled with the mother, *Resol.* of the *Judges*.

If a man and his wife take a house in one parish for a year, and there during this time he is thrust out of possession, and then he takes a part of a house in another parish, and thence he is also put out in two or three dayes, and then not being able to get any dwelling they lie in a barn in a third parish, and there she is delivered of a child, in this case the parents and children are to be sent back againe to the first parish out of which they were forced, *Resol. Judges*, 1633. *Sess.* 23.

If a woman that hath a base childe marry a husband; it hath been said, he is not bound to keep it unlesse he hath an estate by her, but the place where it is settled must keep it. But I doubt this much, whose is the Cow, his is the Calf. And if parents upon 53 *Eliz.* shall comprehend grand-father, and grand-mother, shall include parents in Law as well parents in nature.

If I live in *A*, in a house there with children, and I am hired to serve one

B. and do so, my children shall continue in A. But if I take a house in B, it is said my children shall be settled there, *per. Dalton* 120.

If a maid-servant be got with child at A. by her fellow-servant or another of that Town, after both their times of services do end, and they marry, and then the man is retained in service at B, the woman delivered of her childe in A, in this case she and her childe shall be settled with the father at B, by *Dalton* 120.

And whereever the woman with child is to be settled in the parish, if she die, her childe will be charged one the same parish.

IF a Servant or Apprentice be out of his time, he is not to be thrust out of the place, but must continue there and be disposed of, as his case doth require. And there, if he fall impotent, he is to be provided for, if not, when their services are ended they are to get into new services. But if the Master of an Apprentice die within the time, happily he may be forced to provide for him for the time.

Apprentices
and Servants.

IF a maid be got with childe in her Masters service, and then goeth out of her Masters service, before, or after it be discovered she is with child, and the reputed father or mother notable; in this case the parish is to be charged

Of other
Persons.

Cha. 20. ged with the child and mother, also if she do fall impotent; And the master is no more bound to provide for her than another. And yet if the master hath put her away illegally (that is) before her time is ended, and without order of a Justice of Peace, in this case he may be perhaps forced to keep her during the time. If she be with childe before the master hire her, and he know it not, he may not put her away without Order of a Justice of Peace, who may do it for this cause, and then she will fall upon the charge of the parish. But if she be begot with childe during her service, then it seems the Justices cannot discharge her, and then she must be during the time upon the masters charge, *Resol. Judges. 1633. Sess. 12, 21.*

And if a woman unmarried be hired weekly, or half yearly in a parish, and there she hap to be got with child, and then goeth into an other parish, where she is settled in service, or otherwise two or three moneths, and when she appears with child; in this case she is to be settled in this place, and not in the place where she was got with child. *Resol. Judges 1633. Sess. 12.*

Such as have able bodies and are idle, refusing to work, and no wanderers, are not to be sent to the place of birth, or last habitation, but to the house of correction. *43 Eliz. 2. Lamb. Just. Peace, 209, 205. Dalt. 99.*

No man is to be put out of the Town where he dwelleth; nor to be sent to the place of birth, or last habitation, but a vagrant Rogue. And

And there if they be able they must work if they can get work. If they cannot, the overseers must set them to work, so that those poor whose time in houses or services is ended must get new houses and services themselves, if they be able to work, and may not be removed; by *Dalt. 120.* and others.

4. The Justices of Peace in their Quarter Sessions if any question be about these things do settle it according to these rules.

5. Such as do remove any contrary to these rules may be fined. And if any be sent to any place contrary these rules, they are to be ordered back again to the place from whence they came, *Statute 43. Eliz.*

These Officers must provide house as well as victuals for their poor, and therefore they may by order of the Quarter Sessions, and leave of the Lord of the Mannor first had in writing under his hand and seal, build any house for the impotent poor of the Parish, in any wast part of the Mannor. Also they may place more families than one therein, as Inmates without any danger. But then this house must not be afterwards converted into any other use; for so it may become a cottage afterwards.

6. The next main part of their office is to make rates to enable them to do their work before mentioned. And for the manner and order of doing hereof, See *Rates ch. 43.* 25. And these things are here further to be known.

Seff. 6.

Inmaking Rates.

1. If any man shall bring into any parish under

Cha. 20. der any pretence, a man like to be chargeable and burdensome, he may be raised in his rate to the full value of his estate there, if there be cause. *Resol. of the Judges.*

2. They may put a speciall and extraordinary summe upon any man to help to bind a poor childe Apprentice.

3. No relief can be had in these cases, but at the Quarter Sessions, where the Justices when they understand the case, will not relieve.

4. If the Parishioners pay not their Rate, the Church-wardens and Overseers may levy it by distresse and sale of their goods by a Warrant from two Justices, *Quorum unus*, and for want of distress, two Justices may send him to Gaol till he pay it. 43. *Eliz.* 2.

Seſſ. 14.
With what.

They are to do their work by and with the money raised by the rates: Also with the money that comes to them by the forfeitures of Delinquents, upon the Statutes against Ale-house-keepers and Tipplers, sale of Tenters, default of Clothiers, the flesh in Lent in a Victualling-house, for taking Partridges, profaning the Sabbath, or Gods name, and such as offend against the Statute made for the poor, and against Rogues.

Seſſ. 8.
In giving
an account.

The last part of their duty is in giving an account. 1. They are within four dayes after the end of their year, and after others are appointed, to give account to two Justices of the Peace what they have received, or rated and not received, 43. *Eliz.* 2.

2. What stock they have in their hands, or in the hands of any of the poor.

3. Wh

3. What Apprentices they have bound.
4. What poor they have set on work.
5. Whom they have suffered to wander.
6. Whether they have met monethly.
7. How they have made and levied their Rates.

8. How they have executed the Justices Warrant.

9. The mony in their hands they are to deliver over to their successours, or forfeit twenty shillings, which may be levied by warrant from two such Justices to the Church-wardens and Overseers.

No poor may beg but in their own parish, *Sess. 9.* and that by license of the Overseers. Nor may *What poor* they beg by the high-ways though in the *may beg.* same parish. *Resol. Judges temp. Q. Eliz. 3. Sess. 8.* Neither may any give Alms at their door, but to such poor, under pain of ten shillings.

Nor can any Justice of Peace license the poor to beg in any case. *Dalt. J. P. fol. 152. 153.*

1. Any one Justice of the Peace who may appoint overseers of the poor, may send to the house of Correction, or common Gaol, any thriflesse or idle poor that will not work, being thereunto appointed by the overseers, or that are otherwise disorderly, by 21, *Fac. 28. 43. Eli. 2. Dalt. J. P. 121. 173. 7. Fac. 4.*

2. But there must be two Justices of Peace *In making* *Overseers* *Quorum unus*, to execute the Statute of 43. *Eli.* about the poor.

3. And two of these nearest to the place, must

Cha. 20. must yearly in the Easter week, or within a month after Easter, under their hands and seals appoint two, or more overseers with the Church-Wardens, to look to the poor, *sub pena* five pound to every Justice of that division; and these Overseers and Church-wardens with the Justices consent, are to make rates, bind Apprentices, set the able poor on work, and provide for the impotent poor. And if any be grieved with the Act of these two Justices of Peace, they may appeal to the Quarter Sessions, 43. *Eliz.*

In rating
and levying
of money.

4. And two Justices must confirm the overseers rates, and may enforce the payment thereof, and require an account of them by imprisonment, on their refusal, and force them and others that have any stock in their hands, by distresse and sale of goods, to pay their successors the money in their hands.

These Justices may, if they perceive the parish not able to bear the poor, charge any place within that hundred, to pay to the overseers of the poor of this parish, what summes they think fit, 43. *Eliz.* 2. But if they go further than the hundred, it must be done at the Quarter Sessions. And if the Justices of peace at their Quarter Session set a rate upon the parents, grand-parents, or children, and they pay it not, they forfeit twenty shillings a moneth. The which money these two Justices may give their Warrant to the Church-wardens and overseers to levie by distresse and sale of their goods; or in default thereof, they may send the party to prison till he pay it. But *Quere*, if this may be done by one warrant, and if the Justices may send

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end to prison without proof of lack of distresse. And how it may be proved but by Indictment, 43. *Eliz.* 2. Also they may send their Warrant to the present or subsequent Overseers and Church-wardens, to levie by distresse and sale of goods, all the Rates and Arrears thereof, and any money behind in account in any Overseers hand. And for want thereof, may commit them to Gaol till they have paid it, 43. *Eliz.* 2.

6. They may punish in such sort as before, such as refuse to take Apprentices appointed to them, and such as refuse to let their children be bound Apprentices.

In making Apprentices

7. Any two Justices of Peace may take order to set on work Souldiers, and Mariners that come from Sea, if they cannot get work where they live. 39. *Eliz.* 4. 8. They may give warrant to levie the twenty shillings on the Overseers for neglect of their duty. But no way of conviction set down. And therefore it must be by Indictment, as some hold.

In setting the poor to work.

8. They may compel and take the account of the Overseers and Church wardens every year at the end of their year, 43. *Eliz.* 2. and make them pay that which is in their hands, *sub poena* twenty shillings. They may take the account of Parsons, Constables, Church-wardens and Overseers, who have the disposall of any summs of money given since. 4. *Jac.* to be employed for the binding of Apprentices, who are bound once a year within a moneth of Easter, to give them an account thereof.

In taking an account,

9. The Church-wardens and Overseers in the first case, they may force by sale of their goods

Cha. 20. goods, or for want of goods, by imprisonment. But how this shall be done without Inditement to convict the offenders unless the officer appear and refuse in present *Quere lien*.

In giving
license to
travell, or
beg.

10. Any two Justices of Peace may license poor people to go to *Bath* for cure of their diseases: them that suffer shipwreck, and poor Souldiers and Mariners, to go from their place of landing, to their place of birth, or last habitation; but in no case can they license them to beg. But a poor Souldier or mariner in his way home, may beg by 39. *Eliz.* 17. One Justice may license a Souldier, or Mariner, landing here. and give him a convenient time to go to the place whither he would go.

SECT. II.
What a
Rogue is.

As touching Rogues, these three things are to be known. 1. That a Rogue, or a wanderer (being all one) is an idle Begger that doth wander and loyter abroad from place to place, without a lawful Passport whether he beg or not.

And first, all persons above seven years old, that go about begging or wandring idly, under any pretence whatsoever; but a childe under seven years old cannot be a Rogue. 2. All idle persons that go about using unlawfull Arts, as Juglers, Fortune-tellers, &c. 3. All Proctors, Patent-gatherers, Collectors for Gaols, prisons or Hospitals, (but not Paten-gatherers for fire.) 4. All Fencers, Bearwards, common Players of Enterludes, and Minstrels, wandring abroad. 5. All Pedlers, Tinkers, petty Chapmen, and Gasse-men wandring abroad; especially if they be unknown, and have no good Testimonial.

6. All wandring persons, and common Labourers, being able to work, that loyter, and refuse to work for reasonable wages, not having whereon to live. *Resol. tem. Eliz. 10.* 7. Such as having license from the Overseers, to beg in their own Parish, do beg elsewhere. *Idem. 15.* 8. Those who wander in the habit of Egyptians, not being Felons. 9. Souldiers and Mariners that beg; especially if they counterfeit a certificate of their Commanders, not being Felons. 10. Persons that go to or from *Bath*, and do not pursue their License. 11. A Rogue whipped, that doth not pursue the directions of his Testimoniall, or that doth beg. 12. He that doth go with a generall Pasport, and not from parish to parish. 13. He that shall go with his Pasport himself without a guide: Yea, it is held now that none can go with a Pasport but he will be a Rogue, and that all Pasports are void. 14. Servants that go out of their Parishes in service into another, without a Testimoniall, or with a forged Testimoniall. 5. *Eliz. 4.* 15. Such as run away, or threaten to run from their charges, and to leave them to the parish. 7. *Jac. 4.* 16. A Souldier or Mariner that hath a pension, and shall beg or counterfeit a Certificat. 43. *Eliz. 3.* 17. Those that are sick of the plague, and wilfully go abroad in company, contrary to the Officers command. All these are held to be Rogues. And a Feme covert being a vagrant, is to be accounted a Rogue as well as a man, *Dalt. 7. P. chap. 47. 21. Jac. 28. 39. Eliz. 4. 1. Iac. 7.* But if the Parents were not Rogues, the children shall not be accounted so, unlessse they beg and become so. But such

Cha. 20. as beg in their own parishes onely, or wander onely in the next parish, and do not go about the Countrey are not accounted Rogues, 43. *Eliz. 2. Lamb. I. P. 209, 295. Dalt. 99.* And therefore if such as have able bodies to work, and do not wander out of their parish, and have no means to live by, and refuse to work at the wages ordinarily given, are not to be sent to the place of their birth, or last dwelling by the space of a year, but to the Bridwell. And so also are such as have meanes, if they be disorderly persons, *Cook 2. part Inst. 730.* So it seems the Law is for such as beg in their own parishes.

Self. 12.
what shall
be done
with h.m,

First, He must be whipped openly, till his body be bloody. 2. He must have a Passe or Testimoniall under the hand and seale of one Justice of peace, or under the hands and seals of the Minister, Constable, and one of the parish besides, appointing him whither he shall go, which way, and in what time. 3. With this Passe he is to be sent and conveyed from parish to parish by the Officers thereof, the next way to the parish where he was born, if it may be known by his confession, or otherwise: If not, then to the parish where he last dwelt before the same punishment by the space of one year, 39. *Eliz.* 4. Or if neither can be known, then to the parish thorow which he last past without punishment; and the Officer thereof shall carry him to the correction house, or common Gaol, where he is to be till he be placed (if able) in service, if other wise, in an Almshouse.

Upon which branches these things are to be known;

known; 1. Generally, the wife and children must go and be with the husband and parents. And if a wife become vagrant, she is to be sent to her husband, *Resol. of the Judges, Tem. Eliz.* 2. None shall be forced to turn Rogue, so as to be sent, &c. 3. None but a Rogue is to be thus used; for if a servant be out of his time, or is idle, or go into another parish, and is there idle, he is not so to be handled. So if a Traveller passe thorow a parish. 4. The childe of a woman hanged for felony, is to be sent to the place of its birth; and if that cannot be known, to the place where she was taken. 5. He that doth run, or threaten to run from his charge, &c. Such persons as being allowed by the Overseers to beg, exceed their license, such as have been infected with the plague and able idle persons, that being poor, refuse to work, are not upon their delivery to be sent unto their place of birth, but to their place of dwelling, if they have any; if not where they last dwelt for a year. *Dalt. I. P. f. 181.* For no man is to be put out of the Town where he dwelleth, or to be sent to his place of birth, or last habitation, but a vagrant Rogue, (that is) such a one as doth wander abroad in the Countrey, and not others; and the loiterer that will not work for the wages assessed, may be sent to the house of correction *Resol. of the Judges, tem. Eliz.* 9. See more of this before, on *Settlement of the poor.* 5. He that is found in the privy search, may be punished by the Justice of Peace, or sent to the house of correction there to be set on work. 6. He is not to be relieved: if any Officer give him money, or an Ale-house-keeper

Committment.

Cha. 20. keeper lodge him, he forfeits 10. shillings. *Dalt. I. P. f. 156, 157.* 7. He that doth any thing in hinderance of the execution of the Statute doth forfeit five pound, and to be bound to the good behaviour. 31. *Eliz. 4.* 8. Such a one as is able to labour, and thereby to help himself and his, and doth threaten to run away, and leave his charge to the parish, or doth so.

Self. 23.
Incorrigible Rogue, who and what is to be done with them.

Such one as doth appear to be dangerous to the people, that doth offer violence, or use any threatening speeches towards them, or will not leave his roguish life; but either being punished and sent home, doth rogue again, or affirm that he was born in such a place, or last dwelt a year in such a Town, and when he is come thither it appears to be false. *Dalt. I. P. 151.* These are by the Constables to be brought before the next Justice of peace, who may secure them. And two Justices of Peace may send them to the house of Correction, or Gaol, till Quarter Sessions, and then they are to be branded on the left shoulder with an hot iron, &c. and from the Sessions to be sent to the place of his last habitation. 1. *Iac. 7. 25.* And he that falsifieth the place of his birth, is to be sent away by the two next Justices of that place.

Commitment.

Self. 14.
The power and duty of a Justice of Peace here, in out of Sessions

Any one Justice of Peace may cause a Soldier or Mariner that hath a pension, and shall beg, or shall counterfeit a Certificate. 43. *Eliz.* or any other Rogues and Vagabonds which shall be begging, wandring, or mis-ordering themselves, to be whipped and sent to their place of birth, &c. with a Testimoniall of their Correction, the place to which they are to go, and the time in which they are to go to it.

secure an incorrigible Rogue till two Justices can send him to Gaol, &c. 39. *Eliz.* 4. 1. *Iac.* 7. But there must be two Justices of peace *Quorum u-*
aw, that may by Warrant under their hands & seals, upon Confession of the offence, or proof of two witnesses, cause to be levied by distresse and sale of goods of the offender, all the Forfeitures upon 39. *Eliz.* 4. 1. *Iac.* 7. viz. five shillings of the Minister for not keeping a Register Book, ten shillings of the Constable for not doing his indeavour to punish and send home Rogues, twenty shillings of him for not punishing and sending away a Rogue that is brought to him by another, ten shillings of any man that doth not apprehend him at his house begging, or that bring them out of *Ireland* thither. And to dispose of the money to the use of the poor, or for Bridewell, according to their discretion. So also there must be two such Justices, that upon confession or proof of two Witnesses, may by Warrant under their hands and seals levy five pounds by distresse and sale of goods, and binde to the good behaviour such as hinder the Execution of the Statute of 39. *Eliz.* 4. for Rogues; as the officers that shall send a Rogue by a generall passport, or refuse to receive a Rogue being brought to him, or shall shift him away, or shall not deliver him to the next parish, or any person that shall rescue, or shift away a Rogue; or the Church-wardens and Overseers of parishes, that having such a one duly sent to them, refuse him; or being duly settled remove him. So there must be two such Justices to hear and determine any other Question upon the Statute of Rogues, which

Good Behaviour.

Cha. 20.

it seems they have power to do out of Sessions, as well as in Sessions. *Dalt. I. P. fol. 156. 39. Eliz. 4.*

Also there must be two such Justices to send to the house of Correction or Gaol such as do run away and leave their families; or that may, upon oath of two witnesses, send to the house of Correction such as threaten onely to do so, except they give security to save the parish harmlesse, *7. Jac. 4.* or to commit any incorrigible Rogues to Bridewell; and it seems also, that two Justices may meet twice in a year, or more, for the Execution of the Statute of *7. Jac. 4.* against Rogues, may four or five dayes before send their Warrants for a privie search, and to apprehend and bring them before them, and to require then all the Constables of Hundreds and Parishes to be there, and upon Oath under the Ministers hand to present what Rogues they have taken, punished, and sent away, and fine forty shillings or under, any of them for their default of not appearing, or not returnings, or for not executing of the Justices Warants in the convey of Rogues to the house of Corection, *7. Jac. 4. 21. Jac. 28.* But it is convenient there be more than two Justices at this meeting, *Dalt. I. P. fol. 157.*

Search-
warrant.

CHAP.

CHAP. XXI.

*Of Masters, Servants, Apprentices,
and Labourers.*

For the better understanding of the Law touching Masters, Servants, Apprentices, and Labourers, these things must be known.

The words of the Statute in this case are these:

None but such as now lawfully use or exercise any Art, Mystery, or manual occupation, shall set up, occupy, use, or exercise any Craft, Mystery, or Occupation now used or occupied within the Realm of *England and Wales*, except he shall have been brought up therein seven years at the least Apprentice, in manner and form above said, *sub pena* forty shillings a month.

5. Eliz. 4. 4. Ph. & M. 3. 188, 1. Jac. 22. For opening of which branche, these things must be taken in. 2. Any man by the common Law might have used any Trade, or as many Trades as he please; and all Ordinances of Restraint herein were void. But now it seems a man may not use divers trades, unlesse he have been Apprentice to them. But if the Master be a Mercer, and he did allwayes sell Grocery wares, the servant may do so like wise. (2. By manual occupation meant Clothier, weaver, Dier, Tailer, Butcher, Baker, Brewer, Pippinmonger, Upholster, Gardner are not within this Statute, nor Women, Dauber, Thatcher, &c. But trade

Self. I.
who may
use Trade.
Apprentices

Cha. 21. *rep. 1. part, fol. 189. vie. patra.* 2. *pert.* Apprentices and trade. Cook, Chandler, Millars, the trades undernamed, and the like. Yet it seems, the Statute doth intend other Trades as well as manuell occupations. 3. Sale by Retail is an occupation within this Statute. 4. One may be, or hire and keep a Chandler, Millard, Baker, Brewer, Cook, or Tailer, for his own use, that hath not been trained up in it, nor Apprentice to it; for it is the publick and common use of the trade to get a living by, and for gain, not the private use, which the Statute intendeth: but he cannot retain an Apprentice in the trade. 5. To make a man of a trade, he must be Apprentice to him, who did openly, commonly, and by publick profession, sell, and not privarly by stealth. 6. If a Tradesman die, his wife cannot use this trade except it be in London, which is by speclall custom; and a Tanners wife in a speclall case by 1. *Iac* 22. 7. It is sufficient to inable a man to a trade, that he hath been brought up seven years in it, though he be not bound by Indenture. But in some cases by the Statute he must be bound by Indenture, and as an Apprentice. 5. *Eliz.* 4. *Dal.* 3. *P.* 99. 8. An Infant under twenty and one years old may bind himself Apprentice by Indenture according to the Statute of 5. *Eliz.* 4. *Dal.* 3. *P.* 100, 101. And if he bind himself otherwise than by Indenture, it seems it will bind him, by *Trin.* 21. *Iac.* Cook *B. per curiam.* But if the Agreement be against the Statute of *Eliz.* it is void.

Infant.

9. No Butcher during the time he doth c

Apprentices, and Labourers.

131

Exercise that trade, can use the Trade of a Tanner, *sub pœna* six shillings eight pence a day. 2. *Fac. 22.* Cha. 21.

10. No Currier during the time he doth exercise that Trade, can use the Trade of a Tanner, Cordwainer, Shoo-maker, Butcher, or other using cutting of Leather, *sub pœna* 8. s. 8. d. a Hide. 1. *Iac. 22.*

See 5. *Eliz. 5.* for Mariners and Gunners, and 2. & 3. *Pb. & Mar. 11.* about Weavers.

1. All those that are unmarried, and others under thirty years old that have been brought up in the Trades under-named, [in Retainer] or that used them three years or more, not having in any kind of Land, or Rent, an Estate in Fee, or for Life *de claro*, 40. s. *per annum*, nor in goods, 10. l. *de claro*, and so allowed by the two next Justices under their hands and seals, not being retained with any in husbandry, or in either of the said Trades or some other, or lawfully retained, and in Office or service with some Nobleman, Gentleman or others; Nor having a convenient Farm or Tillage of his own whereabout he is employed, upon request of any one using the same Trade, shall be retained by him. 5. *Eliz. 5.* And if they refuse to serve for the wages assessed, or promise to serve, and do not; any one justice of Peace upon complaint may hear the matter, and if he find them faulty, commit them till they give bond to the Masters to conform, and to serve according to the Law.

Sec. 2.
Who may
be compelled
to serve,
and how.
In trades.

2. The man-child may be bound till he is twenty four years of age; and the woman till twenty one, of those poor of

Cha. 21. such Parents who are not able to maintain them.

In Husbandry.

3. All persons of men-kind, between the age of twelve and sixty, not using the Seas, nor in service with any Fisher, Husband man, Kidder, or Carrier of corn and meal for London; nor in any City or market Town with any Tradesman there allowed to take an Apprentice, nor being retained by the year, or half year, about the seeking or working of Silver, Tinne, Lead, Iron, Copper, Stone, Coal, making of Glasse, or not being a Gentleman born, a Student or Scholar in the University or School, not having in Land or Rent, in Fee or for life, *de clavi* forty shillings *per annum*, nor in goods ten pound, nor having a Father or other Ancestor living whose heir he is, and that hath such Lands or ten pounds a year, or goods of forty pounds, not being retained, nor having a Farm [as before in the last clause] nor otherwise lawfully retained according to this Statute, shall be forced to serve by the year in Husbandry, the Husbandman that shall require him. 5. *Eliz.* 4. And if they refuse to serve for the wages appointed, or promise to serve, and do not, any one Justice of Peace upon complaint may hear the matter, and if he find them guilty, commit them till they give bond to their Masters to conform, and to serve according to the Law.

Commitment.

Woman.

4. And such woman as is twelve years old and under forty, and unmarried, and out of service, if the Justices see her fit to serve by the year, week, or day, they may compel her to serve for such Wages, and in such sort, as the Justices think meet. 4. *Eliz.* 4. or commit her to any

to prison, till she give bond to do it.

5. None is to be compelled to be bound an Apprentice after he is twenty one years old, 5. Eliz. 4.

6. In Harvest time to save the corn, and when need is, any Justice on complaint may compell those Artificers and others, to work in that work he thinks them fit for, by the day. And if he refuse, put him in the stocks two dayes and a night; and this the Constable must do. *sub pœna 40. s. 5. Eliz. 4.*

For the better understanding of which branches, these things must be known. 1. He that hath not sufficient lands to occupy, or live upon or another trade, is compellable to serve. 2. That if any of these men or women, not able to live at their own hands by any visible meanes they have, be warned by two Justices of the peace, to put themselves in service, by a day set them, and they do not; but continue to work at their own hands, they may be bound to appear at the next Sessions, or assizes, and to be of good behaviour in the mean time, or may be sent to the house of correction. *Resol. of the Judges. temp. Car. 17.* 3. One that wandreth may be forced to serve; but his first master, if he have any, will have him again. 4. The children that serveers of the poor may bind, must be above seven. See *Poor.*

1. Wollen cloth Weavers making cloth commonly to be sold by Clothiers (except such as are in the Counties of *Cumberland, Westmerland, Lancaster, and Wales*, that weave Frizes, Cottons, or Housewives cloth onely) may not take any Apprentice, or instruct any one but his

Sess. 23.

Good behav:
viours

Sess. 17.

Sess. 14.
About retai-
ner, hiring
and keeping
Of Appren-
tices.

Cha. 21. sonne in their Trade, in any place but Cities, Towns Corporate, or Market Towns, unless the Father or Mother of the Apprentice have at that time an estate in Fee, or for life, of some hereditaments *de clare* three pounds *per annum*, to be certified by three Justices under their hands and seals. The tenor of the Indenture to be registred in the parish where the Master dwells *subpoena* twenty shillings a moneth s. Eliz. 4. 2. Every Housholder using halfe a Plowland, or more in Tillage, may by Indenture take to his Apprentice in husbandry any one above ten, and under eighteen years old, untill his age of twenty one at the least, or untill his age of twenty four, as they can agree. And he may require it; and if the party refuse to be bound, he may be enforced to it upon his complaint by a Justice of Peace, s. Eliz. 4. 3. Every Housholder in any Market Town not Corporate, of twenty four years old, using any Trade Art, or Mystery there (he not being a husbandman or labourer) so long as he useth the trade, and the Town is a Market Town, may take to his Apprentice the childe of any other Artificer (not being Husbandman or Labourer of the same or any such like town in the County, to any Trade commoly used in that Town after the custome of London) for seven years so that it end not before he be twenty four years old, s. Eliz. 4.

Every Housholder in any City or Town corporate, of twenty four years old, using any Trade, Art, or Mystery there, may during the time he shall inhabite there, and use that Trade retain the sonne of any Free-man therein

Appentices, and Labourers.

Cha. 21.

in any such Town (not being a Husbandman or Labourer) to be his Apprentice (after the custome of the City of London) for seven years at least, so as it end not before he be twenty four years old, 5. Eliz. 4.

But he that lives in a Market town not corporate, and useth the Mystery and craft of a Merchant trading beyond the Seas, Mercer, Draper, Goldsmith, Ironmonger, Embroiderer, or Clothier that doth put cloth to sale, may not take an Apprentice, or instruct any one in that Trade except he be his own son, or the Father or Mother of the Apprentice have at the time of the taking of him, an estate in Fee, or for Life, of some hereditaments *de clara*, three pounds a year at least, to be certified under the hands and seals of three Justices of the County, to the head Officer of that City or Town. And any such person as liveth in a City, or Town Corporate, must take no Apprentice, except his parents have forty shillings a year [as in the last in every particular.] 5. London, Norwich, and Godalming in Surrey, may take Apprentices according to their customes, 5. Eliz. 4. 6. The Smith, Plow-wright, Wheel-wright, Millwright, Carpenter, rough-Mason, Plasterer, Sawyer, Lime-burner, Brick-maker, Brick-layer, Tyler, Slater, Hellier, Tyle-maker, Linnen-weaver, Turner, Cowper, Miller, Earthen-potter, Wollen-weaver, weaving Muswives or Household Cloth onely, Fuller, or Tenker, or Walker, Burnet of Oare and Wood-ashes, Thatcher, or Shingler, may take any Apprentices in their Trades, though their parents have no estate in lands at all, 5. Eliz. 4. 7. He that is retained as

Cha. 21. an Apprentice, must in some cases be retained by Indenture, and by the name of an Apprentice, 5. Eliz. 4. But another servant may be retained by word. 8. He that is under twenty one years old, and is bound by Indenture to any Art, or Trade, according to the tenor of this Statute, is bound as much as if he were of full age, 5. Eliz. And so in other cases. 9. If any retain any Apprentice contrary to the true meaning of this Statute, he forfeits ten pounds. And all Indentures, Promises, Covenants, and Barganes, for the taking or keeping of any Apprentice other wise than is appointed by this Statute are void to all intents in Law, 5. Eliz. 4. 10. He that hath three Apprentices in the trades of Cloth-maker, Fuller, Shearman, Weaver, Tayler or Shoemaker, must keep one Journey-man. And for every other Apprentice above the number of three, one Journey-man, *sub poena* ten pounds, 5. Eliz. 4. 11. In the Statute of 5. Eliz. 4. after the clause before forbidding such as have not been Apprentices to use Trades, these words follow, (*viz.*) None may set any person on worke in any Mystery, Art or Occupation, being not a workman at this day, except he shall have been Apprentice, as is aforesaid, or else having served as an Apprentice, as is aforesaid, shall become a Journey-man, or hired by the year, *sub poena* 40. s. a moneth. 12. None may hire any person, or be hired to serve or work with him for lesse time than one year in these trades, *viz.* of Clothiers, Wollen-cloth-Weavers, Tuckers, Cloth-workers, Fullers, Shearmen, Dyers, Hosiers, Taylers, Shoemakers, Tanners, Pewterers,

terers, Bakers, Brewers, Glovers, Smiths, Farriers, Curriers, Sadlers, Spurriers, Turners, Cap-pers, Hat-makers, or Felt-makers, Bowyers, Flechers, Arrow-head-makers, Butchers, Cooks, Millards, 5. *Elez.* 3. by *Dalt. J. P. fol. 97.*

This clause extendeth onely to these Trades, not to Husbandry: Yet (saith he) no retainer of any servant for lesse than a year, is good. *Quere*, For then the assessing of wages for lesse time wer void. It must be directed therefore to retainers for husbandry by this branch before, by which men are compelled to serve by the year in husbandry; but by agreement they may serve for lesse time. After the clause in the Statut of 5. *Elez.* forbidding any to give or take more than the wages assessed, this clause followeth, (*viz.*) And that every retainer, promise, gift, or paiment of wages, or other thing whatsoever contrary to the true meaning of this Statute, and every writing and bond to that purpose, shall be void and of none effect 13. If any Master retain a servant that hath not brought his Testimoniall, and shewed it to the chief Officer of the place where he is to be retained, he is to lose five pound, 5. *Elez.* 4.

For the clearing of which, these things are to be known. 1. By the retainer the servant is presently in service by law, though he be not so indeed, and therefore his not coming is a departure. 2. If the retainer be by one, that by the Statute is not able to keep a servant, it is void. 3. If a retainer be generally, and they agree not how long, it shall be for a year. 4. If one retain for forty

Sec. 5.

Cha. 21. forty dayes, and after another doth retain for a year, the first is void, and the last good. 5. If the retainer be to serve according to the Statute, on condition, or generally, and say not what to do for three years, or for life, and no wages spoken of, it is good, *Dalt. J.P. ch. 31*. But to retain for a year to serve when he shall be required, or for forty dayes, is not good. 6. This Statute extends not to serving-men, but is for Servants of Husband-men, and Handicraftsmen. 7. If the retainer be by deed, he may be bound to the deed. For if one not compellable to serve in Husbandry, covenant to serve, he is bound by his covenant, and may be punished if he depart. 8. One cannot retain an Apprentice in that Trade wherein himself hath not been brought up. 9. The Certificate of three Justices to the Head of a Corporation, of the ability of the Parents of the Apprentice is not necessary; but it is needfull that he be of that ability, *Dalt. J.P.f. 98*. 10. If one take an Infant, or other servant out of anothers service, though he be not retained, it is punishable, *Dalt. J.P.ch. 31. Compleat Justice.f. 148, 149*. 11. See more in *Departure, 1. Jac. 24. 3. Jac. 9. 1. 1st. 17, 16*.

Self. 6.
How they
must de-
mean them-
selves one
towards a-
nother.
Masters.
Apprentices,
Servants.

1. The Master must not abuse his servant but give him diet and wages, and what is fit, which they must not exceed; If he abuse his servant, he may have relief by the Justice of Peace, to whom he must make his complaint, 5. *Elix. 4*.

2. The servant must carry himself dutifully and obediently: and if he do otherwise, he may be punished, and the Master is to complain to the Justice of Peace. If any Servant, Work-

man, or Labourer, wilfully or maliciously make an assault or an affray upon his Master or Mistresse, or any other appointed by them for the oversight of the work, he may be imprisoned, or further punished for it. And if their be cause, the Justices of the peace at the Sessions may discharge him of the Apprentiship. 5. *Eliz.*

Labourers.

4. 3. If any Labourer or Artificer that taketh upon him to do any work, do before he hath finished it, leave it, unlesse it be with the Masters license, for lack of pay, or that he is called to a publick service, or for other good cause, he shall be imprisoned one moneth, and forfeit 5 Pound, which the Master may sue for in the Sessions, and recover above his damage at Common Law

5. *Eliz.* 4. 4. They must work from the midst of March, till the midst of September, from 5 till between 7 and 8. and all the rest of the year from the break of day till night, all the day, (except two hours and a half allowed for his meals,) *sub pœna*, one peny for every hour he is idle, to keep out of his wages, 5. *Eliz.* 4. 5. If a Servant be put away by his Master without

Wages.

cause, it seems he shall have all his wages. And if he be of age, and agreeth to part, yet he shall have his wages *pro rata* for the time of his service which the Justice of Peace may help him to, for he cannot sue for it. But if the servant of his own head depart before his time, he loseth his wages.

6. If the servant within his time fall sick, or lame, if it be in doing his Masters work, or by the act of God, it seems he is to have his wages.

7. If the servant be an Infant, yet if he do his work, he shall have his wages. 8. If the retainer be according to the Statute, the Executour of the

Cha. 21.

the Master after his death, shall be charged for the wages. And if the retainer be by deed, though it be not according to the Statute, if it be not against it, it seems the wages is recoverable. *Compleat Justice* 249. *Dalt. J. P. fol. 103.*

Self. 7.
Assessment
of wages.

The wages of all Husbandmen, Artificers, Weavers, Seamsters, Labourers, Servants, and other workmen whatsoever, by the year, moneth, week, day, or otherwise, with or without meat and drink; and what every man shall take by the great for mowing reaping, or threshing of Corn, for mowing and making of Hay, for ditching, paling, railing, or hedging by the rod, perch, lodge, yard, pole, or foot, and the like, must be set down by the Justices of Peace at their Quarter Sessions next after Easter, or at a generall meeting within six weeks after Easter. And this the Sheriffe is to proclaim; which being done, every man is bound to observe them; so that if any refuse to pay so much as they asseffe, he is to forfeit ten shillings to the party greived. And if the Master, directly or indirectly, agree for, or give more, he shall be imprisoned ten dayes without bail, and lose five pounds. And if the Servant agree for or take more, he is to be imprisoned one and twenty dayes without baile. But it seems they are not bound to this Rate on either side, till it be proclaimed. *5. Eliz. 4. 6. Jac. 1.*

Self. 8.
out dis
aging,
putting
y of
ants, or
verities.

1. None may put away his Apprentice himself, nor can be discharged but by order at the Quarter Sessions, under the hands and seals of four Justices, *Quorum unus. 5. Eliz. 5.*

2 None

2. None that retaineth a servant, may put him or her away before the end of their term without cause allowed by one or more Justices of the Peace, nor then without giving a quarters warning, *sub pena*, 40. s. if he cannot prove by two witnesses he had cause allowed, and did give warning. 5. *Elix*. 4. For clearing of which, know this, 1. The Master cannot discharge his Servant within the time, unlessse they both agree to it, by which it may be don if they be both of age. 2, An Apprentice cannot be discharged by word, as another servant may be, but it must be by writing. 3. If a woman servant marry, yet she must not be put away, but must serve her time. So if two married people bind themselves, they must serve the time. 4. If a woman with childe be hired, and the Master know not of it, he cannot, but the Justice of Peace may put her away for this cause, befor the end of her term. But if she be gotten with childe in his service, she is not to be put away till the end of her term. *Resol. of the Judges, tempore Caroli Regis*, 21. 5. The Master may not put away his servant, because he is sick, lame, or the like; within the time. 6. If the Master will not allow the servant necessary food, lodging and the like; or will not pay him his Wages, or the like; or correct him immoderately, or will not license him to depart; the Justice of peace may allow him to depart, but he cannot depart of himself. 7. A servant cannot be discharged by his master, without his own Agreement, or for some cause allowed by a Justice of Peace. 8. Some say, an Apprentice cannot be discharged by his Master without writing:

Chā. 21. writing : But this is doubtfull, for if the Retainer may be by Paroll (as in some cases it may be) it seems the discharge may be so also. 9. It is thought by some, that the Servant, with the mutual consent of Master and Servant, may be put away, and that this may be without the allowance of a Justice of Peace. *Dalt. I. P. f. 102.*

Se^{ct}. 9.
About de-
parture of
servants or
apprentices.

1. The not coming of a Servant hired, according to his Covenant, is a departure in Law, *Dalt. I. P.*

2. No Servant retained according to the Statute, shall without cause allowed by one Justice of Peace, depart out of his service before the end of his or their Term, *5. Eliz.* 4. nor then without giving a Quarter warning before two witnesses. And if he doe, he may have remedy by two Justices of peace, who may (if upon examination of the matter they find him faulty) commit him to prison, till he give bond to his Master to serve him for wages appointed by the Statute.

3. No Apprentice may depart without License under hand and seal of four Justices of the peace, *Quorum unus*, at the Quarter Sessions *5. Eliz.* 4.

4. A departure may be in an Apprentice, or Servant that is hired otherwise than the Statute; as if any of those not compellable to serve, will voluntarily bind themselves, and contrary to their agreement depart, they may be punished by the Statute. but if it be such a retainer that is forgotten by the Statute; as for more wages, lesse time, &c. then it seems the Statute makes it void. And if there be no retainer, there can be no departure.

5. No person retained in any of the Trades Cha. 21.
 abovesaid, or in husbandry, may at the end of Testimonial
 his term depart out of one place into another,
 without he have a Testimonial in writing un-
 der the seal of the City; if it were from a City;
 or the Constable, or other head officer, and two
 honest householders of the place where he last
 served, to show his lawfull departure; and from
 whence he came, &c. 5. *Eli.* 4. And he that doth
 so, is to be imprisoned till he get one, which if
 he get not within twenty one dayes after Im-
 prisonment; or if he counterfeit or forge his
 Testimoniall, he is to be whipped and used as a
 Vagabond. Labourers that have been used to go
 into other Countries at Harvest time, and for
 harvest work, may go thither, if there be not suf-
 ficient in there own county, as they have been
 used; but then they must bring with them a Te-
 monial under the hand and seal of one Ju-
 rice of peace in the County. 5. *Eliz.* 4. For
 clearing these things, know this. 1. A woman-
 servant being married cannot depart, but must
 serve her time. So if two married people bind
 themselves; 2. If he come not according to pro-
 mise, or refuse to do his work, though he stay
 with him, this is a departure in Law. 3. If a
 servant depart, his Master may take him again
 and retain him. 4. They that cannot be put a-
 way, cannot depart without leave, or agree-
 ment. (*See before.*)

6. All the offences against this Statute may be Who may &
 punished at the Quarter Sessions, or special Ses- punish
 sions. 5. *Eliz.* 4. 31. *Eliz.* 4. The Forfeitures out of offences a-
 Corporations for these Offences go half to the gainst this
 King, and half to him that will sue, 5. *Eliz.* 4. Statute.

Any

Chap. 21.

Sect. 19.

How such
Offenders
shall be
punished;
The power
and duty of
the Justices
of Peace
herein out
of Sessions.
Commir-
ment.
Apprentice.

Commir-
ment.

House of
Correction,
Licence,

Departure.

Commir-
ment.

Apprentice.

Order.

Bind over

Any one Justice of Peace may do these following things, viz. 1. Upon request, put in the Stocks two dayes, and one night, such as be at their discretion fit to work by day in the Harvest time for saving of Corn, or Hay, and required, refuse to do. 2. Command vagrant persons to prison, that will not serve. 3. Upon the complaint of the Husbandman, that hath half a Plough land, or more, or other, compell such a one, as he in his discretion shall think fit to be bound Apprentice with the Husbandman, or other in Husbandry, or other Trade, &c. if he desire him, and on refusall, imprison him till he do conform. 4. Upon confession, or proof, send an Apprentice that purloyneth twelve pence, or above, of his Masters goods, and all his Accessories, to Gaol; or if it be under twelve pence, to the House of Correction. 5. License under his hand and seal, Labourers in Harvest time, to passe out of one County into another. 6. Allow of the cause of putting away, or the departure of a Servant within his time; otherwise of an Apprentice. 7. Send to the Gaol or House of Correction, common Labourers that will not work for the wages assessed; and others that have nothing but their labour to maintain them, and will not work for reasonable wages; and Apprentices that run from their Masters, or are otherwise disorderly. 8. Upon complaint of the Master, Servant, or Apprentice, of any wrong done to other, in their parting before the end of the term, hear and determine the difference, and according to his discretion set down an order between them, and if the Master refuse to obey it, bind him to appear at Sessions.

and if the fault be in the Servant, or Ap-
 prentice, send him to the house of Correction; **Cha. 21.**
 perhaps he may bind him to the good beha- **House of**
 viour, especially if he refuse to obey his order; **Good be-**
 and then he must bind him to appear at Sessi- **haviour.**
 ons. 9. Upon complaint, that a Servant refuseth
 to serve, or to serve for wages appointed, or to
 do his duty, or departeth before his term ended;
 is run away, or of a servant, that he doth abuse
 his Master, or the like; he may as it seemes; send
 for the party; and bind him to appear at the **Bind over.**
 next Sessions of the peace, or happily he may
 send him to the house of Correction, or bind
 him to the good behaviour: and if the Master **Good beha-**
 put away the servant, the Justice, it seems, may **viour.**
 bind him to answer the matter at Sessions. 10. By
 Agreement between the Master and Appren- **Bind over.**
 tice, and by writing under the Masters hand,
 it seems, he may discharge the Apprentice.
 43. *Eliz. 2. 7. Jac. 4. 21. Jac. 28. 5. Eliz. 4. Dalt.*
L. P. c. 31.

But there must be two Justices (and any two
 may do it) to do these things following. *viz. Sect. 11.*
 1. To bind to the Assizes or Sessions, and to the **Bind over.**
 good behaviour in the *interim*, or to send to the **Good beha-**
 house of Correction such as having no ability, **viour,**
 had a day by them set to put themselves into **House of**
 service, and do not. *Resol. of the Judges tem. R. C.*
 2. To punish the servant retained according **Commis-**
 to the Statute by imprisonment, till he give bond **ment,**
 to serve; or that before his term end, and with-
 out allowance of a Justice of Peace, departeth,
 or doth not come according to promise; or be-
 come, doth not labour; or departeth at his
 term end without giving a Quarters warning;

Cha. 21. of the Master by forty shillings fine, that without such allowance putteth his servant away before the term ends, or for not giving a Quarters warning at the end of the term to his servant. 3. Upon complaint, to imprison such women above twelve, and under forty, as are compellable by the Statute to serve, and being required, refuse so to do, till they give bond to do it. And to imprison such as are compellable to serve in Husbandry, or other Trades, that refuse to serve for the wages assessed, till they give bond to do it, and then to be discharged without Fee. 4. To punish the Master by fine of five pounds, and Imprisonment ten dayes, for giving more wages then is appointed, and to imprison the servant twenty one dayes for taking it. 5. To put in prison for one year, or lesse time, the servant that is proved by his confession, or two witnesses, to have made an Affray, or assault on his Master, Mistress, or Governor. 6. To make a Testimoniall to a Servant that is to be turned away, or to go away after his Masters death. 7. To punish him by the five pounds fine, that retaineth a servant without a Testimoniall. To commit them that hire servants for lesse than a year. To imprison Labourers, and fine them five pounds, for departing from their work before it be done. But these three last things (it seemes) must be done in a general or speciall Sessions, and cannot be done otherwise: and it seems, in all these cases before, any two Justices of Peace, *Quorum unus*, have power to keep a special Sessions twice a year, between *Michaelmas* and *Christmas*; and *Lady-day*, at *St. John Baptist*, wherein they are enabled by

Commit-
ments.Commit-
ment.

Testimonial.

Commit-
ment.

Sessions.

the wayes they think fit, to make a diligent enquiry of the Execution of the Statute of the 5. Eliz. And where they find any default, to punish it; which they may do by indictment, Information, &c. And for this they are to have five shillings a day for three dayes out of the fines and forfeitures. 5 Eliz. 4. 31 Eliz. 5. Dalt. 7. P. cap. 13. And hence they may send proccesse against one that is departed into another County.

If any Clothier or others, refuse to give so much wages as is set down by the Justices of Peace, there must be two Justices of the Peace, *Quorum unus*, that upon his confession or proof of witnesses, may grant their Warrant to distrain and sell his Goods to pay the forfeiture of ten shillings. To discharge an Apprentice of his Apprentiship against his Masters good will; or where the Apprentice is not of age to agree, or he was bound by others, it must be done by four Justices of the Peace, *Quorum unus* and that in the Sessions, and cannot be elsewhere. But it may be at this private Sessions, if there be so many there of the Justices. 5 Eliz. 4. Two of the next Justices may in Easter, or within a moneth after, take the account of such as have the disposition of any money for the placing of Apprentices in any parish within the County, by any mans gift, 7 Jac. 3.

Sett. 12.

Clothiers,

Warrant.

Apprentices.
Discharge.

Account.

CHAP. XXII.

Of sending to Bridewell.

Tobaccoers,

Hedge-breakers.

Such as run
from their
families.Such as have
a bastard,
Vagrants.

Any one Justice of the Peace may send to Bridewell him that will not work by the appointment of the Overseers of the poor, or common Labourers, which refuse to work for the wages assessed, or for reasonable wages, if they be such as have nothing but their work to live upon, *Dalt. J. P. fol. 121. 39. Eliz. 4. 43. Eliz. 2. 7. Jac. 4.* So a common Hedge-breaker, or Robber of Orchards, against *43. Eliz. 7. Dalt. J. P. fol. 173.* So one Justice may send to Bridewell for three months, a blasphemous Heretick that shall deny the holiness of God, upon the Act: of which see *ch. 3. 2.* But there must be two Justices of peace, *Quorum unus*, to send to the House of Correction, or Gaol, such as do run away, and leave their Families to the Parish; or upon oath of two Witnesses to send to Bridewell such as threaten to do so, unless they give security to save the Parish harmless, *7. Jac. 5.* So to commit the woman thither a year, which hath a bastard child, that may be chargeable to the parish. So to commit thither one that doth beg beyond his License. So to commit thither such as being poor and not able to keep their children, yet will not suffer them to be bound Apprentices by the Overseers.

seers, but intice them away. So to send thither such as live out of service, and have no visible means of their own to maintain themselves without their labour, and refuse to serve as hired servants by the year, being warned by two Justices of Peace so to do by a set day, *Resol. Judges 1633, Sect. 17.* So to commit thither an incorrigible Rogue; yet one Justice may secure him, till two Justices can come together, 7. *Jac. 4. 39. Eliz. Dalt. 4. I. P. 154.* So also to commit thither any other Rogue, Vagabond, wandring, idle, or disorderly persons. And these the Constables are to convey them at the charges of the Hundred, *Cook 2. Inst. 630.* A Bawd, or one that keeps a Bawdy-house, may be sent thither; but this must be by the Court of the Sessions, upon the Act of 9. *August. 1648. 4.* A Rogue whose place of birth or last dwelling for a year cannot be known, may be brought thither by the Officer of the Town thorow which he last past unpunished, when he is sent thither after he is whipped, 39. *Eliz. 4. 5.* A disorderly person that hath meanes, *Cook. 2. part Inst. 730.* But no Justice may send thither him that is idle and able to work, if he have means to live by.

Rogues.

Eba. 23.

CHAP. XXIII.

Of Cloth, and Clothiers, Weavers, &c.

Sess. 1.

The power
and duty of
Justices of
peace here-
in set of
Sessions

ANy one Justice of Peace may enter into any place and search for Tenters, Wrenches, and such like Engines, which are used for the deceitfull stretching of Cloth; and finding any by view, or oath of two witnesses, he may deface them; and for the second offence sell them. But there must be two Justices of peace to dispose of this money to the use of the poor. And if the Justice upon complaint to him, doth not search, he loseth five pounds, 39. Eliz. 20. 43 Eliz. 18.

Overseers
Recogni-
zance.
Oath

There must be two Justices to make Overseers of Cloth, or searchers: and they must binde them by oath and bond to do their best, that these things may be observed. 1. That they do once a Quarter at least search the clothes, wheresoever they be, to see; 1. That the measure be according to the Statutes. 2. That the Cloth be sealed, and the seal expresse the measure, and the names of the Overseers, &c. 3. That it be not stretched, nor shrunk more in wetting than a yard and a half in length, and half a quarter in breadth. 4. That no Tenters, &c. be used. 5. That no Iron Cards, or Pickards be used. 6. That no Cloth or Wooll be falsly dyed. 7. That no deceitfull stuff be interposed. 8. That it be not deceitfully pressed, 2 Ed. 6. 2.

39 Eliz. 20. 43 Eliz. 20. 4 Jac. 2. 21 Jac. 18. 3 Cha. 23.
Ed. 6. 6. 7 Jac. 16. 3 Jac. 1.

Any two Justices of peace may, upon Informa-
tion of any default given them by any Searcher or Overseer of Cloth of any other, call before them any person known, or suspected to offend by mixing Flocks, Nails, Threads, or Hair, or any deceivable things in their making of Cloth; call and swear witnesses, for the examining of the matter, and if they find it true by proof of two witnesses, or the parties confession, notify it to the Church-wardens and Overseers of the poor, and give them a warrant to levie the Forfeiture, by distresse, and sale of goods, and for lack thereof, may commit the offender to Gaol, till he pay the money, 21 Jac. 18.

Self. 2.

V Varrant.

There must be two Justices, *Quantum unum*, upon proof of two witnesses, or confession of the party, to give Warrant to levie by distresse, and sale of goods, the ten shillings forfeiture upon Clothiers and others that refuse to pay their wages assessed by the Justices of peace, at Easter Sessions, 1 Jac. 6. So also there must be two such Justices, who upon confession, or proof of two Witnesses, may fine five pounds, give Warrant to levie it by distresse, and for want of distresse commit him to prison, who doth put in any Flocks, &c. into broad Cloth, on 21 Jac. 1. So to take information of the deceitfull usage of linen cloth, of him that seized it, and to bid him to give evidence at the Sessions, on 1 El. 12. But any two Justices may require Weavers, Carders, &c. and their receivers, knowing thereof, that imbezle or detain wooll or yarn,

Self. 3.

V Varrant.

Cha. 23. upon confession of the party, or oath of one witness to make satisfaction, according to their discretion, or cause them to be whipped, or flogged. 7. *Iac.* 7. So also these two Justices may divide defective Broad-cloth presented to them, into three parts, and give one part to the Overseers of the Cloth, and two parts to the poor, upon, 4. *Iac.* 2. 4. & 5. *Pb. & Mar.* 5. 21. *Iac.* 18. So also they may divide defective clothes, Kerseys, Frizes, or Cottons, into three parts, upon 5. & 6. *Ed.* 6. But enquire if it may be done out of Sessions. For the Statute is, that two Justices of the Peace may take the Presentment of him that findeth the faulty cloth, to the intent the cloth may be cut into three equall parts, the one to the King, the other to the Presenter, the third to him that it shall be presented unto. And it seems it may. Every Justice beyond *Trent* hath some power herein for so see to the cloth of that Country, 39. *Eliz.* 28. 21. *Iac.* 18. But for the better knowledge of these things observe, 1. These severall deceits following.

Secl. 3.
The severall
offences by
deceits in
making of
Cloth, and
the punish-
ment.

1. Raising, or Rowing of any kind of Cloth, or Kersey, with oyle, Goose grease, Swinegrease, or laying on, or in, of any such like liquid or moist thing of any kind of grease, or oil, save onely upon the edge of the sheares, and not shearing it plain. 4. *Iac.* 2. 13. s. 4. d. forfeiture.

2. The raising, fulling, rowing or shearing the Lists and sides of Clothes, and Kerseys, better than the middle, and not doing all alike well, thirteen shillings four pence. *Idem*, 4. *Iac.*

3. The cutting and taking away of Wool
from

From the back sides of Clothes, and Kerfies, with knives or such like devices, it being onely to be shorn with a pair of sheares, thirteen shillings four pence, 4. *Jac.*

4. The blowing, spouring, or bedewing of Broad-cloth or Kerfies, on the sides and edges near the Lists, with water or other liquid thing, whereby they may there appear better than in the midst thereof, thirteen shillings four pence.

5. To do so of purpose to increase the weight, and deceive the buyers or searchers, fourty shillings. But abatement to be allowed for dressing, &c. 4. *Jac.* 2.

6. To put Flocks, Nails, Hair, Thrum, and lambs-wool, or other deceivable stuff, 43. *Eliz.* 10. 21. *Iac.* 18. into broad woollen cloth, five pounds, no more, to the poor. So to put in any chalk, flower, or starch, fourty shillings. 3. and 4. *Ed.* 2.

7. But Flocks, Hair, and yarn made of Lambs-wool, may be put in white straights made in Devonshire and Cornwall, by the, 27. *Eliz.* 18. and must have a speciall mark, by 4. *Iac.* 2.

8. The making of them lesse in length, bradth, or weight, than the Statute of 4. *Iac.* 2. which repealeth 6. *Ed.* 6. 4. & 5. *Ph.* & *M.* 27. *Eliz.* 17. 35. *Eliz.* 7. 10. 11. 3. *Iac.* 10. as to this point, or lesse than the Seal purporteth, 4. *Iac.* 2.

9. If it want weight, or exceed in length, against 4. *Iac.* the Searchers or Overseers that find, may certifie it by their seals, and have half the forfeiture, by 8. *Iac.* 2. And by 21. *Iac.* it is but

Chap. 23.

but a third part. If the buyer shall find default not made known by the Searchers, Overseers seal, he may call the Seller, and his, or some one of his appointments present, examining the same; and if the default be found, the Buyer shall have one half of the forfeiture by 4 Jac. 2.

10. Ten shillings every yard over the length. Ten shillings for every pound above two pounds wanting weight. If of full weight and length, and full in breadth, if it be through the whole cloth, twenty shillings: if half, ten shillings, under half, five shillings.

11. The forfeitures for want of length, breadth, and weight, the Overseers that find, and certify the default, may recover in the Quarter-Sessions a third part of it: the other two parts shall be to the poor of the place where the Cloth is made, to be levied by the Churchwardens and Overseers, by distresse and sale of goods, 21 Jac. 18.

12. The pressing of any cloth but what is to be transported, 3. & 4. Ed. 6. 2. or pressing of cloth with the hot presse, or otherwise than with the cold presse, 5 & 6 Ed. 6. 5. losse of the cloth, or value: or heating of thick boards or planks, and laying them under and above the cloth in the cold presse: or putting of thin or feeling boards, or past-boards made hot in the cuttles or plaies of clothes, and then presently putting the same into a cold presse: Or any other pressing with any heat of fire, or the like deceitfull means, 21 Jac. 18.

13. The using of tenterers, and such devices with a lower barre, pin, rins, or other Engine where

Wherby any rough and unwrought woollen cloth made to be sold, shall be stretched in breadth; or the having, keeping, or using of any stretching head, grownd, rope, or other Engine for the stretching of any such cloth in length, made to be sold, *sub pena* twenty pounds 43. Eliz. 10. Or setting of any such cloth, made to be sold, upon any such Engine to be stretched, or to stretch it more than thus: The whole wrought woollen Broad-cloth, one yard in length, and one half quarter in breadth, and so the rest, according to 43. Eliz. 10. *sub pena* the losse of the cloth. So he that shall sell the cloth so stretched; The same, fre 21. Jac. 10. and being transported, it may be returned, by 43. Eliz. 10. 7. The boyling of Wools with Galls, Rinds, Barks of trees, or Saw-dust, *sub pena* the losse of the Wool, 5. & 6. Ed. 6. 16.

14. The dying with Logwood, Woad, or other such like stuff, against 36. Eliz. 11. See Logwood.

15. The selling by lesse measure than a yard and an inch, six shillings eight pence every yard, 3. & 4. Ed. 6. 2.

16. For deceit in false colours put upon Cloth, or Wool, and using of Iron Cards, or Pickards. See in the Charge fol. 17.

17. It being wet or shrunke more than a yard and a half in length, and a quarter in breadth, of a whole cloth, *ex sic pro rata* in other pieces, it is suspicious, and not to be sold by the Clothier *sub pena* twenty shillings, 3. & 4. Ed. 6. 2.

18. The

Chap.

18. The Clothier must not sell his cloth, if he hath paid or agreed with the Alneger for a fee, *sub pena* twenty shillings, 5. & 6. Ed. 6. and he must seal it, for it cannot be transported till then, *sub pena* losse of the cloth, or the value, 5. & 6. Ed. 6. 5.

19. The working of it by Gigmil, five pounds 5. & 6. Ed. 6. 22.

20. The Alneger must seal it, and be paid his fee ere it be put to sale, 27. H. 8. 12. 5. & 6. Ed. 6. 6.

21. All Customes and duties must be paid to the Keepers of the Liberties.

1. Justices of Peace must make Overseers in every place. See 2. & 4. Ed. 6. 39. Eliz. 20. 42. Eliz. 10. who may as oft as they think fit, enter into any houses to see how their cloth is made, and must every quarter, *sub pena* ten pound, 3. Ed. 6. 2. 7. Jac. 16, 21. Jac. 18. of what weight and measure it is, &c. And by their seals affixed declare and certifie that which is good, and set down both their names on the seal, 21. Jac. 18. and with the word *Faulty* upon that which is bad. And the Overseer is to put his two names in the seal he doth affix. 21. Jac. 6. 3. He that doth interrupt them in the doing of their duty, forfeits twenty pounds, 3. & 4. Ed. 6. 39. Eliz. 20. If the Overseer refuse, he forfeits fourty shillings, 4. & 4. Ed. 6. upon information two Justices of Peace may punish the deceits used in the marking of cloth, 21. Jac. 18.

4. Searchers must be appointed in Corporations, Cities, Burroughes and Port-Towns. who may do likewise as Overseers. for the clothes that shall be dressed, died, or pressed in such places,

Self. 6.

How discovered and remedied,

Overseers.

Searchers.

places, 21. *Iac.* 18. And the Cloth woven there
must be searched ere it be sold, 4. & 5. *Ph. & M.* 9.
21. *Iac.* 18. They must set their seals to distin-
guish good cause, he loseth five pounds, 5. &
6. *Ed.* 6. 5. Yet that which hath been searched,
viewed, weighed, and sealed already by the
Overseers of Cloth, lawfully authorized, in any
place, may not again be viewed, searched, or
weighed, by another Officer or person. 4. *Iac.*
21. *Iac.* 18. 43. *Elix.* 10. *sub pena* five pounds
to the party grieved, 3. *Iac.* 17. But he that buy-
eth it may search it. 5. The Clothier to every
cloth he makes must set his seal of Lead, de-
claring the just length thereof to be tried by,
and as it will be in the water. 3. & 4. *Ed.* 6. 2. 39.
Elix. 20. If the Merchant transport it before
this be done, he loseth it. or the value of it, 5. &
6. *Ed.* 6. 6. and mark it with the letter E. and M. 4.
& 5. *Ph. & M.* (3. *Iac.* 18.) crowned, wrought in
the cloth, *sub pena* twenty shillings, 3. & 4. *Ed.*
6. and with his own mark, 27. *H.* 8. 12. 5. *H.* 8.
2. The Searchers of great Townes must also
set to their Seals of Lead, with the Armes and
name of the Town to every Cloth. And if they
finde it faulty, they must put another Seal of
Lead with the letter F. into it, at both ends of
the Cloth, and another mark on the List against
the place where the fault is, *sub pena* five
pounds to the chief Officer of the place, 5. & 6.
Ed. 6. 5. And he that shall take off, or counter-
feit either of these Seals, the first offence ten
pounds; the second, Pillory and losse of goods
and chattels, 5. *Ed.* 6. 6. 6. None may sell cloth
in grosse, or by retail, so dressed, died, or
pressed in such City &c. except the seal of the
city

Cha. 23.

City be fixed to both ends of the cloth, & their seal remain at the last end of the cloth that shall be sold, 3. & 6. Ed. 6. 5. 7. The Merchant, Draper, and others, that buy cloth retail, though it be duly sealed, may not sell till they have wet and tried it: And if they find any fault in it, they are to present it to the next Justice of Peace, *sub pena* double the value of it, 5 & 6 Ed. 6. 6. And they are to have a third part of it, and yet shall have their money again of him that sold it, 5. Ed. 6. 6. And if any cloth after such searching in the Country, shall be found faulty in any thing not yet certified and appearing by the Seals of the Overseers and searchers, to him that buyeth it, he may cause it to be tried, giving notice to the Seller to be there if he will; and being found faulty the buyer shall have the moiety of the forfeiture.

8. And the Clothier that loseth by deceitful cloth by the Dyer, or Dressers, &c. fault may have his remedy against them, 5 & 6 Ed. 6. 5. If a cloth, by the default of workmen prove pursie, cockly, bawdy, swally, or rowy by Warp or Woofe, or shall be evil burled or wasted in the mill, or by the default of some work-man be full of hoses, and it be offered to sale, not having a seal of Lead upon it with the word [*faulty*] upon it; the cloth or value thereof is forfeit, 4 & 5. Ph. & M. 5.

If the cloth after triall by the buyer before the seller, if he will be there, having notice, otherwise in his absence, prove less in measure than the Owners seal speaketh, he shall lose six shillings eight pence for every yard.

Of making of Officers.

199

sell, and must pay the value of the wanting Cloth, by 4 Jac. 2.

For the Cloth in *Tork-shire*, See 39 Eliz. 20.

11 Jac. 18.

For *Mildernix*, or *Powl David*, See 1 Jac. 24.

CHAP. XXIV.

Of the making and Ordering of Officers

Two Justices of the Peace may and must once a year call before them, and appoint two or more Searchers or Overseers of Woollen Cloth, within every place out of a Corporation, where Cloth is made or sold, for a year or lesse time, as they please, and bind them by Oath and bond of fourry pounds to do their duty: and he that refuseth the Office, being appointed by the Justices of Peace, not rendering a reasonable excuse, loseth forty shillings, whereof the one half to the Justice of Peace requiring him; see more in Cloth. 3 & 4 Ed. 6. 2. And he is to be in the Sheriffes custody till he pay it, or secure the payment of it.

Sec. 1.

The power and duty of the Justices out of Quarter Sessions; herein.

Overseers of Cloth.

Recognizance.

Two or more Justices of Peace *Quorum unus*, dwelling in or near the place, must yearly within a month of Easter, by Warrant under their hands and seals appoint two or more substantial Householdiers of every Parish to be Overseers of the

Sec. 2.

of the poor. Overseers

Overseers

the

Ch. 24.

Warden.

Commis-
sions.Sess. 3.
Constables

Sessions.

Leet.

the poor, and to joyn with the Church-warden therein, *sub pena* five pounds; and he that refuseth, or is otherwise faulty in doing his office, forfeits twenty shillings, which these two Justices upon proof, by confession, or witnesses may levy by distresse and sale of goods. And in default of distresse; they may commit them to Gaol without bail till they pay it. 43. *Eliz.* 2. See more in *Poor*.

The making, removing, and wearing of high Constables, Petit Constables, and Tithing men, may be by the Justices of Peace. The High Constable is most properly to be made at the Quarter Sessions, or by the more part of the Justices of that Division. But he and the Petit Constable may be made, sworn, and removed by any one Justice of peace, especially if it be in case of necessity that an able Officer is wanting, the old being dead, or removed, or an insufficient one chosen, and there being a great time to the Leet and Sessions, wherein this defect may be supplied. Yet some say, If he be chosen in a Leet; there must be two Justices of Peace for to remove him. But it was resolved by all the Judges, *tempore Caroli*. That if the Leet choose an unfit man, the Justices of Peace may remove him, and put in one that is fit. And the Lord also may lose his Leet by this defect. The Justice then that doth so, must be sure he hath good cause so to do, and then he may do it, *Dalt. J. P. f. 16*. But the most proper remedy to remove an Officer unduly elected, is by complaint at the Assizes or Quarter Sessions. And if any such Officer required by a Justice of peace to serve, refuse to take his Oath, the Justice of

Peace

Peace may bind him over to the Affizes or Sessions, or may indict, fine, and imprison him. **Cha. 24.**

One Justice of peace may require Constables to present such as lodge strangers in any upland Town, for whom they will not answer, **Winch. 13 Ed. 1.** **Indictment.**

There must be two Justices of peace, *quorum unus*, to punish a Constable for his neglect in his Office in the punishment of Rogues, and to levie the ten shillings forfeiture on 1 *Jac. 7.* 29 *Eliz. 4.* So to fine him under forty shillings, if he do not appear and do his duty at the petty Sessions about Rogues, 7 *Jac. 4.* So likewise to call to account Bailiffs and head Constables on the complaint of Churchwardens, for the money received by them on Estreats, for the fines of offenders about high-ways, and by imprisonment till payment, to compell them to pay it in to the Churchwardens, 3 *M. 8.* 5 *Eliz. 13.* **Sess. 3.** **Overseers of weights and measures.** **Fine.**

Any two Justices of Peace, *quorum unus*, may according to their discretion punish by Fine the defaulters of Officers, that do not twice a year view Weights and Measures, and destroy the defective ones, 11 *H. 4. 4.* *Dalt. J. P.* **Sess. 4.** **Overseers of Rivers.** **Sess. 5.** **Treasurers of the County Stock.** **Governour of Bride-well.** **Collector for the common Gaol.** **Warrant.**

Any one Justice of peace may put in Overseers of Rivers, and survey them, 27 *R. 2. 9.* The Treasurers of the County stock, Governour of Bride-well, and Collectors for the Prisoners in the common Gaol, must be chosen at the Quarter Sessions, and cannot be chosen elsewhere: But any two Justices of peace may give Warrant to levie by sale of Goods the Fine imposed by the Justices of peace at Sessions on

Cha. 24. the Treasurers of the County stock for their neglect or refusall.

Sect. 6.
Sheriffs Return of a Jury.

Any one Justice of Peace may punish the defaults of Sheriffs in not returning sufficient Jurors that have forty shillings a year Land, about a forcible Entry. And this it seems he may do by Indictment at any Sessions, 8 H. 6. 9. *Dalt. 7. P. fol. 3. 93.*

Abuses in
the County
Court.

So also he may upon complaint against a Sheriff, of Abuses in his County Court, viz. that he entrench a plaint in the name of a man who is not present himself, nor by his Attourney. 2. That pledges sufficient are not put in by the plaintiff. 3. That the plaintiff doth enter more than one plaint for one Cause. 4. That more plaints are entred than the plaintiff desired. 5. Or that his Bailiff do not warn Defendants, he may examine the Sheriff, or any of his Officers, and if he find it by their confession, or otherwise, he must certifie it within a quarter of a year into the Exchequer, 11 H. 7. 15. And any one Justice may examine the Collectors of the Sheriffs Amercements, if they have collected more than is within their Estreats, and if they find it, certifie it to the Exchequer.

But there must be two, *Quorum viri*, to overlook the Sheriffs Books and Amercements, and to seal the Indentures of his Estreats, being appointed thereunto by the *Custos Rotulorum*, or eldest of the *Quorum*, 27 Eliz. 12. And they are to swear the Bailiffs, Collectors, &c. that they shall take no money more than is contained by their Estreats sealed by the Justices, 27 Eliz. 12. 11 H. 7. 15. *Dalt. J. P. chap. 51.*

If a Sheriff or other Officer that hath the
break

Of making of Officers.

163

breaking of Writs, send his warrant to summon Cha. 25.
or arrest a man to appear in the Sessions, with-
out having an Originall to warrant it, it seems
the Justices may send for him, and the pro-
curers hereof, and examine the matter, and if
proved by witnesses, or confessed, they may
send them to Gaol without bail, till they pay
the party grieved ten pounds, and his costs, &c.

Comm-
ments

43 Eliz: 7.

Two Justices may appoint such as they think
to be fit, to be searchers and Examiners of the
default in Tile-making, 17 Ed. 4. 4. *Dak. 3. P. fol.* *Sess. 7.*
174. and these may present defaults upon their
own view. *Sed quare of this.* *Searchers*
of Tiles.

For the making and ordering of Church-
wardens, Surveyors of High-ways and other
Officers, see in their proper Titles.

CHAP. XXV.

Of Arrest, and Imprisonment, Bail, and Prisons.

For the better understanding of so much of
the Law in this point as concerneth Justi-
ces of Peace, these things are to be known: *Sess. 1.*
An Arrest is the first Act of Imprisonment, *What an*
when one is first restrained of Liberty, and Im- *Arrest or*
prisonment is the continuance thereof, when a *Imprison-*
man (where-ever he be) is so restrained that he *ment is.*
may not go whither and when he will, as at other
times. And to lay hands on a man, and hold
him keep him in a house, lock him in a room,

Cha. 25. tie him to a post or tree, put him in prison or stocks, or the like; or if a known Officer do but say, *I arrest you in the Kings Majesties name*; all these are Imprisonments. But to require another to stand, or stay, or say, He will arrest, or doth intend to arrest him; but doth not lay hands upon him; or to require him to appear before a Magistrate, or the like; these are no Arrests nor Imprisonments, *Cook 9. 66, 69.*

Self. 2.
who may
do it. And
to whom it
may be
done, and
for what
cause, and
how, and
when, and
where.

For the Answer of all the Questions, that concern this matter of Arrest, observe these things:

1. Any man that hath authority by Law to arrest and imprison another may do it. As a Justice of peace, Sheriff, Constable; and in some cases, every man; as in the apprehending of Felons, keeping the Peace, &c.

2. Any man or woman (except Barons, and Peers,) may be arrested and imprisoned.

3. One that may arrest or imprison another in most cases at any time, either in the day, or in the night, and upon any day of the week. But if a Minister be arrested on the Lords day, he that doth arrest him, must take heed he do it not either at Church, or in his going to, or coming from it, for that may be punished, *Cook 9. 66.*

Minister.

R. 2. 15. So also the arrest of any other man now, unless it be in some speciall cases, is unlawfull on the Lords day. See *Chap. 4.*

4. It may be done in any place that is not priviledged from Arrests (as some places are, as in the house, field; and it may be done in Church; but then care must be had, that no disturbance be made to the Congregation.

5. The

5. These persons, and for these Offences, and for the time, and in the places hereafter named, are to be imprisoned, and that without Bail, otherwise than is set down, viz.

Bail.

1. Ale-house-keepers without License, and prohibited by two Justices of Peace, that notwithstanding do sell, may be committed to any prison for three dayes, and untill they enter in to recognizance with two sureties, not to do so again. And for the second offence, to the house of correction for one moneth; and for every offence after, till they be discharged by Quarter-Sessions. But before they can be arrested, they must be legally convicted by inditement.

Ale-house keepers.

Commitment.
Recognizance.
House of Correction.

Such Ale-house-keepers as offend by suffering tipping, or in the Assize, and have not sufficient distress, may be imprisoned till payment, but this must be after a legall conviction, and by a legall Warrant, and so rest.

Commitment.

2. Such persons as go or ride armed, may be imprisoned till they pay their fine for it, after due correction.

Ride armed.

3. He that being appointed an Over-seer of Cloth, refuseth, is to be imprisoned till he pay five pounds, after due conviction thereof.

Over-seers of cloth.

4. Such as make deceivable cloth, and have no distress to answer the forfeiture, are to be imprisoned till payment, after due conviction.

Deceivable cloth.

5. The mother or reputed father of a Bastard, are to be imprisoned till they perform the Justices order, or give bond to do it. And she is to be kept in the house of correction one year: And for the second offence till she give bond and surety for the good behaviour, and not to offend again.

Bastard.

Cha. 25.

Supervisors
of the high-
ways, &c.Account:
Officers for
negleP.

Logwood.

Such as re-
fuse to be
bound.Commir-
ment.Destroyers
of Fish,
Fowl, &c.

6. Surveyors and collectors for Bridges, and for Gaols, and such as receive the money forfeit for offences about High-ways, that refuse to account, are to be imprisoned till they do it, after conviction.

7. Constables and Churchwardens that levy not the forfeitures upon Ale-house-keepers that offend, and have no distress, are to be imprisoned till they pay forty shillings. The Constable that doth not levy the twenty shillings for keeping an unlicensed Ale-house, is to be imprisoned till he do it, or pay forty shillings. For not whipping a Trespasser in Orchards, Woods, &c. according to his Warrant, he is to be imprisoned till he cause it to be done. But all these must be after due conviction.

8. Dyers that use Logwood, are to be imprisoned till they pay the forfeiture, after conviction.

9. Such as, being required by lawfull authority, to put in surety for the Peace, good behaviour, or to appear at Sessions, &c. and refuse, are to be imprisoned till they do it. And in most cases they may not be delivered by the death of the party at whose suit it was done, without the help of the Sessions or Goal-delivery, where a Justice hath power by any Statute to bind over any man, or cause him to do any such like thing which he refuseth, being required by him: in this case it seems he may send him to Gaol till he do it. *Dalt. 7.P. 296.*

10. Destroyers of Ponds, &c. after conviction are to be imprisoned three moneths, and after

till they finde sureties for their good behaviour for seven years.

Destroyers of, and such as shoot at Feasants, &c. after conviction are to be imprisoned three moneths, unless they pay twenty shillings a fowl. So for Hares.

Those that do hunt with Grey-hounds, or Ferrets, are to be imprisoned a year, being first convicted.

Hunting.

11. Such as destroy the game in Parks, are to be imprisoned three years being convicted.

12. Such as hawk between the first of *July* and the 31 of *August*, being dvly convicted, are to be imprisoned a moneth, unless they pay forty shillings a time, and twenty shillings a Partridge.

Hawking.

13. Eaters of flesh in Lent, being convicted, if they pay not twenty shillings, are to be imprisoned a moneth.

Eaters of
Flesh.

14. Such as shoot in guns, being convicted of it, are to be imprisoned till they pay ten pounds.

Shooters in
Guns.

15. Offenders in Riots, Routs, unlawfull Assemblies; forcible Entries and Detainer, being convict, are to be imprisoned till they pay their fine, or find sureties to do it.

Rioters.

16. For a fine put upon a man in any Court of Record generally, a man shall be imprisoned till he pay it, or secure it. *Broo. Impr.*

Fines.

92.

17. A man may be imprisoned for breach of the Peace: For if there be any breach of the peace, or apparent likelihood thereof by any persons, or they assault the Officer himself, he may set them by the heels, or put them in ward

Breach of
the Peace.

Cha. 25. for a time; but after it is past, he can do nothing to them, 12 H. 7.

18. So if two be fighting, any one may take one of them, and lock him up for a time, till the heat be past: but if they be quarrelling onely, he cannot do it, 5 H. 7. 4. unless he be an Officer.

Mad men.

19. A man that is mad and furious, may be imprisoned to prevent mischief.

Foretallers.

20. Foretallers, Regrators, and Ingrossers, being convicted, are to be imprisoned two moneths.

**Conveyers
of Bowes.**

21. Aliens that convey away Bowes, being convict, may be imprisoned till they be fined in Sessions, and give bond to pay it, 35 H. 8, 9.

**Forgers of
Deeds.
Unlawfull
games.**

22. Forgers of Deeds, if they concern Freehold, &c. being convicted are to be imprisoned for their lives, otherwise but for a year.

23. Such as keep places of, or play at unlawful games, being convict thereof, are to be imprisoned till they give surerly no more to offend. And if it be upon his own view, in that case there needs no other conviction, where the Statutes give him power upon his own view to do it.

Hostler.

24. Hostlers that rake excessively for horse-meat, or make horse-bread, against 21 Jac. 21. or make it not of the due assize; for the second offence are to be imprisoned one moneth after conviction of the offence.

Labourers.

25. Labourers and Artificers that go from their work ere it be finished, are to be imprisoned a moneth, after conviction of the offence.

26. Such

26. Such as without allowance of a Justice of Peace, depart before the terme end, or at their terme end, without a quarters warning before two witnesses, are also upon conviction to be imprisoned.

27. Such as are compellable to serve, and refuse to serve on request, or have promised to serve and do not serve accordingly: all these are to be imprisoned till they be bound to the party to serve according to the Statute: And such as refuse to be bound apprentices, are to be committed till they do conforme. But all this after due conviction.

28. The Overseers of the poor that refuse to account, or pay the money in their hands, or that pay not the twenty shillings for any default, may be imprisoned till they do it, after due conviction.

29. The Grandfather, Father, &c. refusing to obey the Justices order, may in case of lack of distress be imprisoned till he pay the twenty shillings a moneth forfeiture.

30. Such as refuse to pay their rates for the Kings Bench and Marshalsey, or for the County stock, are after the conviction, to be imprisoned till they do it.

31. Such as refuse to pay their rates for the places that have the plague, if they have no distress, are to be imprisoned till they pay it. So for the rates of the poor. But they must be duly convicted.

32. Such as come not to Church every Lords day, and have no distress to pay their forfeiture, are to be imprisoned till payment. So for the forfeiture for the moneths absence, 23 E. 1.

33. Incor-

Departure
out of service.

Refusers to
serve.

Poor over-
seer.

Order of
Justices.

Rates.

Refusers to
come to
Church.

Cha. 25.

Rogues.

33. Incurrible Rogues are to be imprisoned in Gaol or in Bridewell, till the next Quarter Sessions, but they must be legally committed.

Disturbing
the Preacher

34. Such as disturb Preachers, hinder the arrest of such persons, or rescue them from arrest, are after conviction, to be imprisoned three moneths, and till the next Sessions.

Perjured
persons,

35. Perjured persons, after conviction, are to be imprisoned six moneths. And the promoters thereof not having to pay the penalty, one year. Stat. 5 Eliz. 9.

Prophefiers.

36. False prophefiers are for the first offence to be imprisoned one year, and for the second, for life, both after due conviction. 5 Eliz. 15.

Malters.

37. Such as disobey the Justices order for restraint of Malting, after conviction, may be imprisoned three dayes, and after till he give bonds of forty pounds to do it.

38. And none of these areailable before the time, or otherwise than is before set down.

Disobedi-
ence to Sessi-
ons orders.

39. Such as disobey an Order of Sessions, may be imprisoned for it; and it seems, may not be bailed by any Justice of the Sessions. *Sed quare.* For such as are arrested on the Sessions process, areailable by two Justices, *Quorum unus.*

Suspicion of
Felony.

Trespassers in Parks may be arrested there. So he that hath a Gun may be arrested.

40. For any Treason or Felony that a man hath done, or upon some cause a man is suspected to have done, he may be arrested and imprisoned, and that by any man that hath cause to suspect him. For any man may arrest another that

that is either indicted of Felony, out-lawed for Felony, &c. or that he knoweth, or seeth to have committed a Felony; or after a Felony is done, if he have cause to suspect him. And so may any man arrest him that is apparently going about to commit a felony, or him that hath dangerously hurt another in an affray; or night-walkers that are suspicious. But except it be in such like cases, and for prevention in some cases, as where two are about to be incontinent, to break the peace, or the like, a man is not to be arrested but upon Process or Warrant from some Court of Record, and by authority from Justices of Record, and after conviction by a Jury, or otherwise. But regularly none may commit another to prison, but he that is a Judge of Record, 9 Ed. 4. 26. 20 Ed. 4. 4; 6. 11 Ed. 4. 4. 3 H. 7. 1. Lamb. J. T. 188, 189.

41. Men may be imprisoned for many other causes; but the Consuance thereof doth not at all belong to the Justices of Peace.

42. A murderer quit before the year and day, is to be sent to prison, or to go upon Bail, till the year and day be past. See 3 H. 7. 1.

A man arrested or imprisoned (and bailable) for felony, shall be bailed before it appear whether he be guilty or no; but if a man be convicted by verdict, &c. he is not bailable, because it appears he is guilty. And so it is upon examination if a man confesses the felony; if the mittimus be for felony confessed, he cannot be bailed, Cook 4. Inst. 178.

The entry of the bail is, *quod A. B. traditur in ballium E. F. de, &c. & J. G. de, &c.* in which case they are his Guardians, and if he escape they

Night-walkers.

Incontinency.

Murderer.
Bail.

Diversity of
Bail and
Mainprise.

Chā. 25. they shall answer it. And where any is delivered in *balliū*, he may safely be kept by his bail for their indemnity, for a Court of Justice doth deliver him to them to be kept.

The forme of
entering a
bail.

Those that bail him are severally bound to the King in a summe by Recognizance, that the Prisoner shall appear at a certain day, & *ultra quilibet & corpus pro corpore*, &c. *Cook 4. Inst. supra. Manu captio*; every bail is a mainprize, but not *è contra*: for no man is bailed but he that is arrested or in prison, for he that is not in custody cannot be delivered out; but a man may be mainpernd which never was in prison, and therefore mainprize is more large than bail, and sometimes these mainpernors are called pledges.

Mainprize.

Bail is after termed by the name of Mainprize, 38 E. 3. fo. 14. Stat. *A. Tū. Barnell*. 1, & 2, M. 13.

Sec. 3.

Those
who is bail-
able, & how.

These persons, and for these offences following, are not to be bailed at all. Such as are in prison for Treason, or the death of a man. But some think a man is baileble, in case of manslaughter, and then much more in cases of less offence, as *Se defendendo*, &c. Such as are in prison on Executions, *Cap. ut legat. Excommunicationis*. On Proceſs of rebellion out of Chancery, Or any Proceſs on an Action personall. Trespasser in the Forrest, Vagabonds, or by some speciall commandment from some speciall Iustices, for speciall cause, fellonious burners of houses, 3 Ed. 1. 15. 23 H. 6. 11. 5 Ed. 3. 8. 2 H. 5. 2. He that hath abjured the Realm, he that breaketh prison, he that is an Approver, or Appellor, one appealed by an Approver: but if he be no common Thief, nor defamed, he may

may be bailed after the death of the Approver. They that conspire to indict another for Felony, they that are convict of *Redisseism*. Conjurers, the Felon that confesseth the Felony, is taken in the manner, or known to have done the felony, or is a known and defamed Felon, or is attainted for the felony, especially if it be the killing of a man, and the *Mittimus* express, the Commitment to be for felony confessed, *Cook 4. part Inst.* 178. He that is accessory to a felony after the Principall is attainted, except he plead not guilty, or other plea. But before he is attainted, *contra*, especially if he be of good fame. He that is convict of Felony, prayeth Clergy, and is reprieved. For when a man is bailed, he should be bailed before it appear whether he be guilty or not. Not in case of *Maim*, when it is great.

But these persons offending in these cases, may be bailed (*viz.*) such an one as doth commit *petit larceny* after he is indicted, if this be the first offence. So also a man may be bailed if the stealing be above twelve pence. So the principal in Robbery or Burglary. So he that is taken upon a light suspicion, charged with receipt of thieves, or other felons, or being accessory to felony, or with a trespass that toucheth not life or member [if it be not prohibited by some latter Statute.] So he that being indicted of Man-slaughter, is acquitted; he that is indicted of murder or Manslaughter at the Kings suit, and quit, isailable during the year. Such as are imprisoned by process out of Sessions, upon penall Laws not forbidding bail. But if he be on an indictment of trespass, he may be bailed by one Justice
of

Cha. 25.

Sect. 4.

The power
and duty of
the Justices
of Peace
herein out
of Sessions.
About im-
prisonment.
Peace.

Commit-
ment.

Commis-
sion.
Refusers to
be bound
over.

Sect 5.

About re-
bail or deli-
very of pri-
soners.
Discharge.

of peace. So such as are charged with Homi-
cides, which are not Felony. All these may be
bailed.

1. In most of the cases before, the Justices of
Peace have the power or imprisonment, and by
their Authority it may be done. And their
Warrant is sufficient to enable them that do it.

2. In all cases where an inferiour Officer of
the peace may *ex officio*, or another man that is
no Officer, may imprison a man for any matter
of the peace, a Justice of peace may much more
imprison him.

3. If the sureties doubt of the escape of the
prisoner bailed, a Justice of Peace upon prayer
may discharge the sureties, and commit the par-
ty to prison; or he may cause the party bailed
to find better sureties.

4. It is thought in all cases, that where the
Justice of Peace hath power to bind over a
man, or to cause him to do something, and he
be in presence and refuse it, that he may im-
prison him till he do it. But this must be warily
taken.

5. Where the Justice of Peace doth imprison
by the power of any Statute, he must take heed
he do pursue his authority by the Statute.

9. The Justices of the Peace may in no case
deliver and discharge any that are accused of
Felony before them, though the case appear ne-
ver so clear; but they are to binde over the
witnesses to prosecute and give evidence, and
commit the party suspected to prison, or take
bail of them to appear at the Sessions or Assi-
zes: See Stat. 2, & 3. *Phil. and M. cap. 10.*
Justices ought to certify all Recognizances
and

and Executions in Felony where the party is committed to prison or to Gaol delivery, and that cannot bind to the Sessions. And Stat. 1, and 2, P. and M. cap. 13. That all Recognizances taken for suspicion of Felony, shall by the Justices be certified in writing at the next generall Gaol-delivery for the same County. By which it appears, that Justices of peace ought to binde none to the Sessions for Felony or suspicion thereof. And they must take heed how they bail Felons; for some have held that they are notailable but at the Assises: And to bail one notailable, is a negligent escape. viz. Stat. 1, and 2, P. and M. cap. 13. and 2, and 3, P. and M. cap. 10.

7. But it is not doubted, but that they may bail these offenders in these cases following, (viz.) One Justice may bail him that is arrested by a Sessions Process upon an Indictment of an ordinary trespass. And he may grant a *Superseas*. So if any man be imprisoned for a lesser offence than Felony, or for the suspicion of such offence, one Justice of peace may bail him except it be forbidden by any special Law, 3 H. 7. 3. *Dalt. f. P. in c. 12.* As he that blasphemeth the Sacrament of the Lords Supper, cannot be bailed to the next Sessions, by lesse than three Justices of peace, 1 Ed. 6. 1.

8. But there must be two Justices, *Quorum unus*, to bail a man that is charged with Felony: and they two must be together at the time of the bailment, and before they bail him, take his examination in writing, and this with the bail and recognizances for witnesses, they must certify to the next Gaol-delivery, 1 R. 3. 3.

3 H. 7.

Examination,
or,
Certification.

And though the offence appear to be *de defendendo*, or the like; yet it is not safe for one alone to do it.

9. The Justice of Peace is not to bail, but in cases which he may hear and determine, 1, & 2, P. & M. c. 13.

10. When he doth bail, especially if it be for Felony, he is to see he have good bail: It is requisite they be two Subsidy men.

Seff. 6.
 Prisoner;
 and prison.

He that is under arrest for Felony, is a prisoner as well without the prison, as in the stocks, in the high-way, or in the possession of him that arrested him, or hath the keeping of him.

Howbeit the Sheriff or Gaoler may imprison in their own Houses, or common Gaol; at their pleasure; yet the proper prison for the Justice of Peace is the common Gaol. But he may for the safe keeping of a prisoner a little while till they may have help to carry him to Gaol, commit him to the stocks, &c. But the Justices of peace may not make their own or others houses a constant prison. Yet in some cases where the Law doth appoint for some speciall offence, a speciall prison, as the House of correction; there they must be sent to that prison. And in some cases the Justice may commit to safe custody according to his discretion. And if the Gaoler refuse the prisoner, he may be kept any where till they that keep him can be delivered of him. *Dalt. 7. P. ch. 118. 5 H. 4. 10 Cook 93 19.*

If one offend in one County, and flee into another, and he be taken there, he must be imprisoned where he is taken. But if he get into that County by escape from the Officer, he may

in a fresh pursuit take him and bring him back to his own Country. Cha. 25.

If the prisoner committed by a Justice of Peace for any offence, be of any ability, he is to bear his own and their charge that wait upon him. And if he refuse, any one Justice of peace may give warrant to the Constable to distrain his goods, and after appraisment by four of the parish, to sell them, rendering the overplus. Sec. 7.

3 Jac 10. 13.

Charge of a prisoner sent to Gaol.

In this Gaol he is to be kept close and sure; and for this, if need be, he may have Irons put upon him. And if the Gaoler do not keep him so, he may be punished.

Where a Statute doth appoint a set time of the taking and keeping of the offender, there that time shall be observed; but where no time is set, it shall be presently, and cannot be afterwards, as in the case of Force. When it appointeth an imprisonment, and saith not how long, it shall be during the pleasure of the Court. If it be during the pleasure of the Judge, it seems the prisoner cannot be delivered till he declare his pleasure. But if imprisonment be by Justice of Peace, in all cases (except for the Peace, Good behaviour, Felony, or higher offences) it is but till the offender hath made his fine, which when he hath paid, or given security for, he is to be discharged.

Sec. 8.

When and how he shall be imprisoned.

CHAP. XXVI.

Of Rates and Assessments.

Touching this point, these things must be known: 1. In making of Rates, it is fit before-hand to give publick notice, then if the Parishioners will come, they may; if not, the Officers may make them themselves. 2. The Rates, if they be Parish-Rates, must not go farther than the parish. 3. For the most part, and in most cases, all sorts of men, and all kind of Estates, and all kind of Land are to be rated. 4. For the Rates of the poor, (by the Rules whereof most other Rates are made) 1. Every Inhabitant, Parson, Vicar, and other, and every occupier of houses, lands, Tithes impropriate, Propriations of Tithes, Cole-mines, and saleable under woods are to be rated. In which these things are to be heeded: 1. A man may be rated to the poor though he have no land in the parish. 2. By saleable under-woods are not meant Timber, but any Wood for fire, albeit it be not cut in thirty or forty years, (as the Beech wood of many Countries) 3. Woods are to be proportioned to a yearly benefit, so that if a man have a hundred acres in a parish, it must be cast what it will make him to continue, and according to that he must be rated. So Mines are to be considered, what profit yearly they do bring in clearly. 4. It is thought fit in rating Impropriations where the Parson hath the Tenth of the Parish, that he bear the tenth

Poor.

Parson.

of the Rate. 5. Ancient Demefne land, Guild-able, and Copie-hold land, are all to be charged.

6. Mens Lands are firft to be rated. And then fome refpect is to be had, (but with much caution) to mens other vifible ability of ftock, of cattell, corn, or grain upon their Land, or of Goods, as houfhouldftuff, cloth, or other Merchandizes, Malt, or the like in his houfe: For that a man that hath a houfe bravely furnifhed, and a hundred pounds to it fully ftocked, and hath a thoufand pounds in Cloth, Malt, or the like in his hands, to pay no more than him that hath a houfe with bare walls, and a hundred pounds, with fcarce any ftock upon it, feems moft unreaſonable. But for mens invifible Eſtates of money, &c. in refpect of the uncertainty of it, it feems no Rate may be ſet upon it, for ſo was it *Reſolved by the Judges, 5 Car.* Yet if a man be known to have an Annuity of one hundred pounds a year, or one thoufand pounds lying in ſuch a mans hands, for which he receives Interelt, and it may be is all his eſtate, let it be well conſidered why in ſo clear a caſe he ſhould not be rated proportionably. And when a man is rated for ſtock or goods, it ſeemeth reaſonable to ſet it after the proportion of Lands, viz. that one 100^l in ſtock, be rated after 5 or 6^l a year. 4. Every mans Land muſt be rated to all Rates, according to the quality and yearly value, or by the pound, and not according to the quantity and content, as the Yard, half Yard, or the like. 5. He that doth occupy Lands in his own hands, lying in ſeverall Pariſhes, muſt be charged in every pariſh for his Land there, onely proportionally and no more.

Cha.26. But for all a mans personall Estate, it seems reasonable he should be charged where his person is. 6. The Farmer is to be charged for his Land he hath in Lease, not the Leaser. The Lord or Leaser is not to be charged for his rent he receiveth for his Land, because the Tenant is chargeable for the whole Land. 7. In the making of the Rate, respect is to be had not onely to a mans ability, but also to the advantage he hath by the thing for which the Rate is made. 8. In some cases a man may be rated beyond his ability, as where one brings a charge upon a Parish, or the like. 9. In all cases of Taxes for the convoy of Rogues, Conny-stock, Common Gaol, House of Correction, and other things where the Law doth give no direction, it is best to follow the Rate for the Poor, and the custom of the place. And so have the Judges given direction, *Resol. Judges, 5 Car. Sess. 18, 19.* 10. The Parson having the full Tenth of the place, may be rated to a tenth part to the poor, *Resol. Judges 1633. 32.*

Cherches,
&c.

For the doing of works for the common good, as amending of Churches, High-ways, Bridges, Sea-banks, or the like, the *major* part of a parish agreeing by a by Law, may binde the rest disagreeing. 11. Any rate by an universall agreement of parishioners will binde them, and so they may appoint one to collect it, and distrain for it, *Dalt. F.P. cap. 52, 53. Cook 5. 57, 67. 10. 139. 9. 104.* 12. Where a Statute appoints a Rate to be set upon every Inhabitant, it must be so set upon every person, that every one may bear his own burden, and not upon the parish, &c, so that one may be distrained for the rest,

Cook

Of Rates and Assessments.

181

Cook 2 part of his *Instit.* 70 4.

If the Parishioners of any Parish, Constables, and Churchwardens cannot agree in the distribution of the Rates or the Justices of Peace, made at Quarter Sessions for the Kings Bench; Marshalsey, Hospitals, losses by fire, &c. then any one Justice of peace living in or near the parish, may set the rate. And if in this case they neglect to levy it, any one Justice of peace may require it to be levied by distress and sale of goods. And in default of distress, he may send the party to prison till he pay it, 43 *Eliz.* 2.

Cha. 26.

Self. 2.

The power and duty of a Justice of Peace herein out of Sessions. VVarrant.

Commitment.

2. The like, (save onely commitment) may one Justice of peace do, in case of default by the Parishioners, Churchwardens, &c. for the Rate set by the Justices of peace in Quarter Sessions, for the relief of maimed Souldiers and Mariners, on 43 *Eliz.* 3.

3. There must be two Justices of peace (and any two may do it) to make a Rate upon the place, and by Warrant under their hands and seals, to cause it to be levied by distress and sale of goods, or by imprisonment in case of lack of distress, to relieve them that are sick of, or shut up for the plague. And for this purpose, upon a certificate of two head Officers of the place (if any be there) to two Justices of peace near the place, otherwise without a certificate, to Rate all places within five miles, and to cause it to be levied as before, to be disposed by the same Officers; or where none such are, by the Justices of Peace. And to fine in ten shillings the Officer that is negligent, 1 *Jac.* 31. 21 *Jac.* 28.

Plague.

4. There must be two, *Quorum unus*, to Rate other

Cha. 26.

Poor.

other parishes in the Hundred for relief of the places that are not able to maintain their poor, 43 *Eliz.* 2. So also there must be to tax the Hundred, for relief of poor Souldiers and Mariners that come from Sea, to set them on work and to maintain them if they cannot have work where they dwell. And this they may do according to their discretion, 39 *Eliz.* 17.

Robbery.

5. So likewise there must be two such Justices in or near the Hundred charged (where the Robbery was done, and where neglect of pursuit is) for those two Hundreds must bear it) to rate the Hundreds for the raising of money lost by a Robbery, when it is levied of one or more of the Hundreds, which they are to do according to their discretion. And this is to be proportioned by the Constables of every place, and levied by them, *ex officio*, by distress and sale of goods, 27 *Eliz.* 13. and the money delivered to a Justice of peace, who must pay it to him that hath right to it.

Brewers.

6. The Justices of peace may in their discretion set down at what rate Beer-brewers, and Ale-brewers shall sell their Barrels, Kilderkins, and Firkins of Beer and Ale. And this *rigore juris*, it seems may be done out of Sessions. But it is best to do it there, 23 *H.* 8. 4.

Bridges.

7. There must be four, *Quorum unus*, to make rates for Bridges, Cook 2^d part of his *Inst.* f. 703. 22 *H.* 8. 5. and for *Chepstow* Bridge, by 3 *Fac.* 23.

Charges to
carry a pri-
soner to
Gaol.

8. Any one Justice of peace may allow of and confirm under his hand, a Rate that is made by the Constables and Churchwardens, and two or three of a Parish where he is taken, for the conveying to Gaol of a prisoner that is sent to

Gaol

Gaol by a Justice of peace for any offence, and cannot bear his own charge. And by Warrant to the Constable or other Officer, cause the same to be levied by distress and (after apprehension by four of the parish) by sale of his goods, rendering to him the over-plus, 2 *Jac.* 10.

As touching which, these things must be known: 1. That in case the prisoner hath no goods or chattels, or none to be found in the County, there must be a rate made. 2. This rate is to be made indifferently by the Constables and Church-wardens, and two of the inhabitants of the place where he is taken; or in default of the Constables and Church-wardens, by four of the principall inhabitants of that place. 3. It seems to be compulsory, for the words are *A Rate shall be made*; and therefore if they do it not, it seems the Justices may by Warrant require them, 3 *Jac.* 10.

What they may do about Rates for the poor, See *Poor*. What they are to do for Rates for maimed Souldiers, High-ways, Churches, and the like; See in their proper Titles.

CHAP. XXVII.

Of Weights and Measures.

IN this, these things must be known; First, *Sec. 1.* There must be but one weight, and one measure, of Corn, Wine, Beer, and Ale, and one Yard thorow the Realm, and this must be according to the Standard in the Exchequer.

2. The *Troy weight* (which hath to the
N 4 pound

Cha. 27. pound twelve ounces, or twenty shillings sterling) and *Averdepois*, which hath sixteen ounces, or 25 shillings sterling to the pound, are both allowed, viz. the *Troy* weight to weigh Gold, Silver, Pearl, precious Stones, Silk, Electuaries, Bread, Wheat, and all manner of Corn and Grain. The *Averdepois* to weigh all kind of Grocery wares, physicall Drugs, Butter, Cheefe, Flesh, Wax, Pitch, Tarr, Tallow, Wools, Hemp, Flax, Iron, Steel, Lead, and all other Commodities, not before named, especially every thing that beareth the name of *Gazbel*, and whereof issueth a refuse or waste. See more in *Dalt. 7.P. ch. 65.* And to every hundred *Averdepois* weight is allowed twelve; so the hundred weight is a hundred and twelve, the half hundred 56, Quart. 28.

3. Bushels, and other Measures of Corn differ according to places, & so do yards or poles, and the custom of the place is regularly to be observed, so that if one buy a number of Bushels, or poles, it shall be according to the measure of the place. The measure of the Corn shall be striked without heap, but the water measure within ship-board, is five pecks striked. 4. Wine is sixteen Gallons and a half to the Rundlet, and thirty and two and a half to the Barrell, sixty three to the Hogshead, a hundred twenty six to the Pipe, two hundred fifty two to the Tun. Beer nine gallons to the Firkin, eighteen to the Kilderkin, thirty six to the Barrell: Ale and Beer, eight to the Firkin, sixteen to the Kilderkin, thirty two to the Barrell, sixty three to the Hogshead or Quarter. 5. And Coopers must make their vessels of this measure, or set a mark upon

upon them where they be otherwise. And the Brewer must sell by these measures, and not otherwise. But Ale and Beer must be sold by one measure, Wine by another, *Dalt. J. P. 184.*

6. Four inches are an handful, twelve a foot, three foot a yard, three foot and nine inches an ell, five yards and a half being eighteen foot and a half, make a pole, rod, or perch; and yet it is more in some places, twenty one, in some twenty four foot. As for the Assize of Bread and Bakers, these Rules must be kept. 1. It must be weighed by *Troy* weight. 2. It must not be weighed after seven dayes. 3. He must sell thirty pence for twelve pence to Victuallers that retail. 4. He must have a mark for his Bread. 5. Every sort of Bread shall be weighed according to the price of the middle sort of Corne. 6. There are three sorts of Bread to be sold, white, wheaten, and household, besides Horsebread. 7. The Bakers of Burroughs, Cities, and Corporate Towns, shall have six shillings for the baking of a quarter of wheat, over and above the second price of wheat in the Market, others in other places shall have four shill. 8. Strangers bread must weigh six ounces in the peny Loaf more than Town dwellers. 9. Three horse loaves must be sold for a peny, thirteen to the dozen, and every Loaf must weigh a peny white Loaf. 10. Bakers and Brewers, if they offend may be amerced; if grievously or frequently, the Baker may be judged to the Pillory, the Brewer to the Tumbrell, i. Cuckin-stool, but this must be in the Sessions, *Dalt. J. P. 181.* For Millards, these Rules are to be kept. 1. The Millards Toll-dish must be according to the Standard. 2. He is to have

Millards,

Cha.27. have the twentieth or twenty fourth part, and in some places more. But he ought to have but one Quart for grinding one Bushell of hard Corn, wit^h Whear, Rie, and Mallin; and if he fetch it, and carry it, two Quarts; and for Malt he is to have but half so much as for hard corn. 3. Millards ought not to be common buyers of Corn, to sell again either in corn or meal.

In the principall Shire town of every County there ought to be in the custody of the chief officers thereof Standards of brasse for weights and measures, according to the great Standard, by which all other measures of the County ought to be regulated. And there is to be but this one Measure and one Weight of the Exchequer thorow the Realm, except for Water measure and Rent corn. And every measure of corn is to be striked without heap, 16 Car.19.

2. In every City, Burrough and Market-Town there ought to be a common measure according to that of the principall City, *sub poena* ten pound to the City, five pound to the Burrough, and forty shillings to the Market-Town for their defaults.

3. The Officers of the Shire Town are to seal such Weights and Measures as are offered to them.

4. None may use in Trading any weights or measures not sealed as before, under pain to forfeit the weight of the goods weighed, two years Imprisonment, and quadruple Damages, 12 H.7. 5. 11 H.6.8. 8 H.6.5. 11 H.6.8. 27 Ed.3.10. 13 R.2.9. *Dalt. F.P.65. Cook 4. part of his Inst.* 274.273.

Stat.2.

1. Any two Justices of Peace, *Quorum* in

The power
and duty of
Iustices of
peace here-
in out of
Sessions.

may after Examination of the Offence, fine according to discretion, such as buy and sell by unlawfull Weights and Measures, or sell with Measures unmarked and unsealed according to the great Standard. But some think this cannot be done but at a private Sessions, 11 H. 7. 4. *Dalt. J. P. 177. 193.* But now by the new Law of 16 Car. any one Justice of Peace may upon proof by oath of one witness against a man, that he doth sell by, or keep any other weight or measure (than according to the great Standard) whereby any thing is bought, or sold, may send his Warrant to the Churchwardens and Overseers of the poor of the place to levie five shillings forfeiture of his goods to the use of the poor. And for want of distress to put him in prison till he pay it.

Some or one of them may and ought to sit with the Clerk of the Market, to see that he doth
1. Not seal any Weight or Measure more than once. 2. That he take nothing for sealing after the first time. 3. That he take no money for any Bills, &c. 4. That he do all by the great Standard. 5. Head Officers of Corporations and Lords of Liberties, that are Clerks of the Market, are to execute their office as formerly, and not refuse any weights or measures, that are just, their due fee being offered, nor allow any that are false under pain of five pounds. Any one Justice may by his Warrant to the Churchwardens and Overseers of the poor of the place, upon oath of one witness, cause to levy by distress and sale of goods, five pound for the first, ten pound for the second, 20. l. for the third offence against a Clerk of the Market for

Clerk of the
Market.

Cha. 28. for taking more than his due Fees, or for signing Weights or Measures, fining or amercing of any without a due tryall. 16 Car. 17.

CHAP. XXVIII.

Of High-ways and Bridges.

Self. 1.
High ways,
Constables,
Church-
wardens.

IN this, these things are to be known : 1. That the Constables and Churchwardens [under pain to be fined at the Quarter Sessions] are the Tuesday or Wednesday in the Easter week to call their neighbours, and choose two Supervisors for the mending of the High-ways leading to Market Towns. And they are to order this work. And if either of them chosen refuse or neglect his duty in this Office, he forfeits twenty shillings a time. *Stat. 2, & 3. P. M. 8.*

Kings high-
ways.

For the discovery of the duty of these Officers and the Law in this point, these things are to be known : 1. That they have to do with no ways but the ways called the Kings High-ways. And so it hath been resolved by the Judges in the Kings Bench, for the Statute is *High-ways leading to Market Towns.*

Six :

Notice.

2. The Constables and the Churchwardens of the Parish, are at the time of chusing of these Officers, to name and appoint four days, to be before the Nativity of *St. John the Baptist* then next following, set apart for the amending of the High-ways ; and they are to give notice thereof the next Sunday after in publick in the Church. And this being done, these Officers, viz.

the Surveyors of the High-ways, are to see that the same be observed, and that all the Parishioners do their work on the same days in manner as followeth.

3. Every person having a Plow-land in Tillage or in pasture in the same Parish, or keeping there a plow or a draught, shall find and send on every day to the place appointed, one Wain or cart provided after the fashion of the County, with Oxen, &c. fit for the carriage, and with necessary Tools fit for the work, and with two able men, and then and there these men must do such Work with their Plow, &c. as they shall be appointed to do by the Surveyors aforesaid, by the space of eight hours on every of the said dayes, under pain to forfeit for every default ten shillings. And every other Householder, Cottager, and Labourers of the Parish (able to work, and be no hired Servant by the year) must by himself or some other able man, be then and there ready to work, and work every one of the said six dayes by the space of eight hours, as they shall be appointed by the said Surveyors, under pain to forfeit twelve pence for every day they shall make default herein. In the explication of which Branch, these things are to be known :

1. That a Plow-land is not of any certain content, but ordinarily so much as one plow may plow in one year, which in some Countries is more, in some less, according to the heaviness of the Soil.

2. That so many plows as men usually have and use in the Summer about their own business, so many they are to bring with them to this

Cha. 28. this work. So that (for example) if a man with one Plow and five or six Horses shall plow seven or eight score Acres of arable land, and shall usually go in the Summer time with two Carts, or Draughts; in this case it seems he is to come with two Carts, or Draughts to his service. And he that occupieth forty or fifty acres of Land, and keepeth onely three Horses and one Draught, or Cart, he is to come with one Draught, or cart.

3. If a man keep onely two Horses, and a Cart for his own busines: in this case, it seems he is to come with his cart, and two Horses provided with a man, or men, to manage them.

4. He that hath a Plow-land, and hath no plow, but doth suffer his Land to lie fresh, yet is to find and send a plow to this work. And so it was agreed by the Judges in the Kings Bench *Mic. 21 Jac.*

5. A plow-land may contain House, Meadow, pasture, and wood: and therefore if one have so much of this as will keep a plow, yeeld tillage for it, if part of it were eared: in this case it seems, he is bound to send his plow, or else to pay for the same the penalty appointed by the Statute for his neglect.

6. He that keepeth a plow or Draught for carriage, albeit he occupie little or no Land, or pasture in his own hands, yet such a one is bound by the Statute to send his plow to this service.

7. He that occupieth a Plow-land, lying in tillage or pasture in severall parishes, shall be chargeable to the amending of the High-ways in the parish where he dwelleth, as far as any person

person having a plow-land in any one parish, is chargeable.

8. Every person keeping in his hands and possession, divers plow-lands, shall be charged to find in each Town or parish, where the plow lands, being in his occupation, do lie, one cart, &c. furnished for the reparation of the High-ways in the severall parishes where his Land doth lie, as if he were a parishioner dwelling in the parish where the plow-land doth lie.

4. If a man be chargeable but as a Cottager, yet if he be in the subsidy five pound in goods or forty shillings in Lands, so long as he stands at that rate, he is to send two able men to the work every one of the six dayes.

5. If the Surveyors shall think any of the plows or carts to be needless any of the dayes, they may spare them, and in stead thereof require two able men, the which must come, under pain to forfeit twelve pence a man for every default.

6. These Officers must see the work be done according to the direction of the Statutes, and every man is to see that he doth his part therein. But if the Surveyors themselves shall license any man to do less than his work, this will excuse him.

7. The Owners of the grounds adjoyning to the High-ways, are to take care that all the Fences, Hedges and Ditches next adjoyning on either side of the same, be from time to time diked, scowred, repaired, and kept low; and that all the Trees and bushes therein be cut down, under pain to lose for every default ten shillings.

Hedges and
ditches next
the High-
ways.

Cha. 28. shillings. And if any man hath any ditch in his own Ground, that doth serve to lead away the water out of the High-way, and he doth not scowr and keep the same clean, so as to convey away the water, he shall forfeit for every Rod not so scowred twelve pence. And if any man that hath a ditch lying by the high-ways side, doth cast the same up into the high-way, and then suffer the same to lie there by the space of six moneths, to the annoyance of the high-way, he shall forfeit for every load so cast up twelve pence.

Nuſance.

8. These Officers may, if they see cause, for the amendment of the High-ways, take and carry away so much of the rubbish and smallest broken stones already digged of any mans Quarry, lying within the same parish, without leave of the owner, as they shall think needfull: but they may not without license dig in any mans Quarry for new stones, much less take away any mans stones already digged. And if there be no such Rubbish to be found in any such Quarry within the said Parish, then they may enter into any mans several ground (within the parish) lying near the place where the ways are decayed, and there, if they see hope of finding materials fit for Reparation thereof, may dig a new Quarry without any leave of the owner of the Ground; or they may enter upon any mans ground, and gather stones that lie dispersed there. But they may not without leave dig for any new Quarry in the House, Garden, Orchard, or Medow of any man; nor (albeit it be in another Ground) dig more than one pit, and the same in breadth or length not above ten yards

over at the most. And then also they must take care that the same be within one moneth after filled up again at the charge of the Parish, under pain to forfeit five Marks to the owner of the ground. And if there be any Spring, or water in the High-way, that doth annoy the High-way, they may turn the same out of the high-way into any mans ditches, according to their discretion.

9. They must within one moneth after any default is made in any of the particulars aforesaid, present the same to the next Justice of peace, under pain to forfeit forty shillings for every neglect.

10. If any man offend against the Statute of 2 & 3 Phil. & Mar. 1. If the Constables and Churchwardens shall not make a due Election of these Officers, and set down, and give notice of the times and dayes for the work ; Or if the Surveyors do not look to and order the work ; or the Parishioners do not wait upon the work as aforesaid ; in all these cases, the offender may be punished by fine or amercement in the quarter Sessions, or Leer, according to the discretion of the Justices of peace, or the Steward. And these fines and amercements are to be levied and imployed by the high Constable. And if any man offend against the Statute of 5 Eli. 1. If these Officers after they have digged in any mans inclosed ground, shall not fill the pit again, or if they shall not present the defaults to the next Justice of peace, as aforesaid ; or if any of the High-ways shall be unrepaired, or the owners of ground shall not cut up their Bushes, and scowre their ditches adjoyning to the high-way ;

Cha. 28.

Before what
Justices,

Inclosure.

way; in these cases, the offender may be punished by Fine at the quarter Sessions according to the discretion of the Justices of peace. And these fines are to be levied and employed, as fines and amercements levied upon the transgressours of the former Statutes. And if any man offend against the Statute of 18 *Elix. c. 9. i.* If any man cast soil into the high-way, and do not remove it within the time aforesaid, or do not scowre their ditches, &c. and cut down their bushes in the High-ways; the forfeitures of these men (being set down in certain by the same Statute) may be levied by these Officers immediately by distress and sale of the Offenders goods upon a Warrant sent from the Justices of Assise, Justices of the Peace, or Steward of a Leet, before whom the same persons shall be convicted. And if they be negligent, and do it not within a year, then the Constables and Churchwardens of the place may levy the same, as money is used to be levied upon an Amercement in a Leet.

11. Such as make inclosures next the High-way, must amend the way next to the inclosure, otherwise it must be amended at the charge of the Town.

12 High-ways leading from Market to Market, should have neither dike or bush wherein Thieves may lurk, within two hundred foot of either side.

13. The Lord of a Park that doth inclose, must set out two hundred foot on each side, from the way, or a sufficient wall, or ditch, or a hedge, that the offenders may not escape. *Dalt. 3. P. c. 26.*

14. The

14. The Bailiff or High-Constable must levie the Amercements estreated for these offences, make a true account, pay the remaining money to the Constables and Churchwardens of the Parish, who must imploy the same on the High-ways, *sub poena* five pounds. And if they refuse to account or pay, they may be imprisoned till they do it. Cha. 28.
Account,
Commio
ment.

15. It seems these Statutes extend not to common Bridges, and that there is another remedy for them, which followeth. *Cook 2 part of his Institutes. 701.*

16. If the offender hath been punished in a Leet for that herein whereof they have conu-
sance, the Justices are not to punish him.

17. If all this labour appointed by the Statutes to be bestowed on high-ways, be not sufficient for the amendment thereof, the Parish must supply it: For the parishioners of every Parish are to look to their High-ways, that they be well repaired and kept, at their perill; for an information of an Indictment may be (by the very Common Law) preferred for the King against the inhabitants of a parish, for not repairing of their High-ways; and thereupon they be fined to the King: and in this case the fines shall not go to the use of the High-ways, as the forfeitures and the penalties for the breaches of the Statutes shall do. Indictment.

By common right common Bridges are to be repaired by the whole County; for it is for all their ease. 2. Those and their Ancestours, who time out of mind have been used to repair Bridges, must do it, and may be forced to do it. And thus a man may be charged either Bridges.

Cha. 28. *ratione tenure*, for that there those whose estate they have in that land, have been used to do it; or by *Prescription*, that such bodies politick or corporate, have been used time out of mind to do it: For other wise, they that have lands adjoining, are not bound. But a voluntary making will not charge a man to do it. 3. If it cannot be known what person or place should do it, it must be known by the places thereabouts, by order of four Iustices of the peace, 22 H. 8. 5. 4. A Bridge lying in a Corporation, or Franchise, the Hundred or Guildable shall not be chargeable with it, *Et sic è converso*. 5. If the Bridge lie in two severall Counties, or other Divisions, both Counties must contribute towards it, *Dalt. J. P. ch. 13.* 6. They that are to repair a Bridge, are to amend the way at both ends of it for three hundred foot, *Cook 2. part fol. 300.* 7. The remedy, if it be not amended, if it be a private Bridge to a Mill, &c. where another hath a way, must be by the Writ, *De ponte reparando*. But if for the publick, it must be by presentment before Iudges of the King Bench, Iustices in Eyre, or Commissioners of Oyre and Terminer, or Iustices of Peace, as followeth *Cook, idem.* 8. Four Iustices, *Quorum unus*, may enjoin the County to do it by a Rate on every man without exception, which must be in parchment in every Hundred, under the Iustices Seals, and then delivered to the Collectors, who afterwards may distrain for it *ex officio*, in any place within the Hundred, and this one of them may do with the consent of the other.

Rate.

Self. 2:

Any one Iustice of peace may present to the Sessions

Sessions any default of the High-ways upon his own view; and this presentment is of as much force as if it were found by a Jury; but it is intraverfable. And he may take the presentment of the Supravisors of the High-ways, or any under-officers touching any default about them. And this he must return to the next quarter Sessions. Also he may cause High-ways to be enlarged, and cleansed of trees and bushes, according to the Statute of *Winchester*. But there must be two, *Quorum unus*, to compell and take the accounts of any Officers that have received any forfeitures for any offence about the High-ways upon the Statutes, and to imprison them till they do account or pay the money in their hands.

Cha. 29.

The power and duty of the Justices of Peace out of Sessions, herein Presentment Certificate.

Commitment.

And there must be four, *Quorum unus*, (and where are not so many, it cannot be done) who with the Constables, or two of the Inhabitants of every parish (and without their assent it cannot be done) may tax the inhabitants in any place within the Shire, for the repairing of a Bridge, or the High-way within 300 foot of it, when it is unknown who ought to repair it, § *Eliz. 13. 18 Eliz. 9. 3 M. 8. Cook 2 part 701.* And they may appoint two Collectors to gather the money, and two Surveyors to look to the work, and give account of it, and of the money, and give them allowance for their pains, and call them or their Executors, or Administrators to account. But it is said, that the safest way of doing this, is at the general Sessions, *Cook 2 part of his Inst. 705.* Four of them, *Quorum unus*, having made the rate for *Chepstow Bridge*, may make Collectors and Surveyors for the

Rate.

Collectors.

Chepstow Bridge.

Cha.29. gathering of the money and oversight of the work. And if any of them, their Executors or Administrators, refuse to account, they may compell them to it, and to pay over the money in their hands, or commit them to prison till they do so, 3 Jac.23. See Nuisance.

CHAP. XXIX,

Of Warrants and Process.

A Warrant of the Justice of Peace is his Command to an inferiour Officer, to do something belonging to his Office. And this in some speciall cases may be good by word of mouth without writing. But of this we speak not here, or it may be, and must be in most cases in writing; and herein these Rules and Advises are to be observed and heeded.

1. The Justice is to take care to pen his Warrant plain and clear, and not ambiguous and doubtfull, so that the Officer must be forced to enquire what may be his meaning by his words.

2. Let the Warrant be compleat when the Justice of peace doth put his hand to it, for it is dangerous to let it go with blanks, and give other men leave to fill it up.

3. The stile of his Warrant may be in the Kings Name thus; *Carolus secundus Dei gratia, &c.* with the teste under the name of the Justice that makes it (which is not usuall) or it may be stiled, and made in the name of the Justice

Justice of peace, thus; *W.D.* Esq; one of the Justices, &c. And this is the usuall form. Or it may be made without any stile, onely under the teste of the Justice of Peace, thus; Complaint being made unto me, &c. These are, &c. witness the said *W.D.* &c. Or it may be made without any teste of the Justice of peace, being subscribed by him, and sealed where sealing is necessary.

4. We do not conceive it necessary to use these words in a Warrant; These are (in the name of our Sovereign Lord the King) to require, but it is sufficient to say, These are to require you; howbeit the Warrant doth carry the more majesty in it, when those words are used in it.

5. The Title of direction may be, either above the Warrant, thus, To the Constable of *Dale*: Or in the body of the Warrant thus; *W.D.* Esq. To the Constable of *Dale*, Whereas, &c.

6. The Warrant may be directed to any Officer, as the Sheriffe, his Bailiffes, Constables, Tythingmen; or to others that are no Officers, thus; To the Sheriffe of the Countrey of *G*, or to the Bailiffe Itinerant of the Countrey of *G*, or to the Bailiffe of the Hundred of *R*, or to the Constable of the Hundred of *R*, in the Countrey of *G*, or to the Constable of the Town or Village of *Dale*, or to the Tythingman of *Dale*, (as the Officer there is called) if it can be known. Otherwise, the best way is to direct it to all the Constables and Tythingmen of *Dale*, within the Countrey of *G*, and every of them. Or it may be directed to all these Officers together;

Cha. 29. To the Sheriffe, and to all Bailiffs, High-Constables of Hundreds, and Constables and Tithing-men of Towns and Parishes within the County of G, and every of them joyntly, and severally. Or it may be directed to these Officers, and to others that are no Officers all together. Or to them that are no Officers alone, thus; To *L.S.* and *W.S.* both of *Dale* in the County of G, and to either of them. But this must be understood of Warrants of the Peace, Good-behaviour, and such like Warrants, wherein the Justice of peace is left at liberty to direct his Warrant to whom he will: for if the Law do direct him to whom he must send his Warrant, as divers Acts of Parliament do, some of them appointing him to direct his Warrant to the Constables; some to the Constables and Church-wardens; some to the Church-wardens and Constables, &c. some to the Church-wardens and Overseers of the poor; he in these cases, that makes the Warrant, must take great care that he do pursue the direction of the Statute punctually, for it is dangerous to vary from it ever so little; and therefore the Title set down in my Book of Presidents for the Warrants must be followed, and not altered. And when the title of direction is to more than one, there it is good to add these words, (And to every of them) and to say in the body of the Warrant, These are to authorize and require you, and every of you. But the best way is to direct it to the common and known Officer, which is the High-Constable of the Hundred, or Constable of the Town, in all cases where it is left

to the Justice of Peace to direct it to whom he please. Cha. 29.

7. The word (greeting) to *I. S.* &c. Greeting, used in Warrants may be left out; so may these words of addition, To the Kings Justices [assigned to keep the peace, and to hear and to determine Felonies, &c.] and it is enough to say Justices of the Peace of (or within) the County of, &c.

8. It is not amiss to say the place wherein the Officer dwells, to whom the Warrant is directed, is within the County. To the Constable of *Dale*, within the County of *G.* And so of other places named within the Warrant, to say they are within the same County.

9. It is not amiss, if the Warrant recite conviction of an offence, to let it express where the offence is done, thus; *I. D.* being convicted before me, that he was drunk (at *Dale* in this County) because in many cases the forfeiture is given to the poor of the place where the offence is done.

10. It is good also now to express the time when the offence was committed, thus; *I. S.* being duely convicted before me, that he was drunk at *Dale* in this County, (the first day, &c.) or within three moneths last past, or since the first of, &c. that it may appear the offence was done since the generall pardon, and in some cases this is, if not necessary, yet very convenient, when the offence is by the Law to be punished within a certain time, or not at all, there it is good to say, that the offence was done within that time.

Cha. 29.

11. It is good also to expresse the place of the making of the Warrant, and it must be some place within the County, thus; Dated at *Dale*, Given under my hand and seal at *Dale* in the same County. But if it say, it was dated at one place, and be dated at another place, yet the Warrant is good, and it shall be taken to be dated where the Warrant doth say it was dated.

12. The day and year also, being the time of the making of the same Warrant, must be expressed in the Warrant.

13. The Warrant (being a Warrant to arrest) may be to require the Officer to bring the offender before the Justice that makes the Warrant, or before him or some other Justice of the County, and either of these forms are good: but the best forme is to require the Officer to bring him before the Justice of peace himself that made the Warrant.

Seal not necessary to a Warrant.

14. In every Warrant for the peace or good behaviour, where sureties are to be found or required, the Warrant ought to contain the speciall cause or matter, to the intent that the party arrested may be provided with sureties. But if it be for some great crime, the cause may be concealed. But the best way is to expresse the cause, as for Treason, Felony, &c. Or for suspicion of Treason, or Felony; otherwise if the prisoner escape, it is no offence; but if the cause be for Felony, then the escape will be Felony, though the prisoner be not guilty of the Felony.

15. In every Warrant to command an Officer to carry a man to Gaol, it is not amiss to insert a clause at the end of the Warrant, to command

mand the Gaoler to receive him, to this purpose; That you him convey to the common Gaol of the County, and him to deliver to the Gaoler or his depury there, who are hereby required him to receive and detain in their custody as a prisoner, untill he shall be from thence delivered by a due course of Law. And this conclusion untill he be delivered by Law, or somewhat like must be in every Warrant and *Mittimus*.

16. There is a necessity in it, that the Justice of peace do subscribe his name to his Warrant. But that he should put to his seal in every case, is not needfull, for in a Warrant of the Peace or good Behaviour it is not needfull, nor where an Act of Parliament saith that the Justice by Warrant (or by Warrant under his hand) may do such a thing. But if the Law say he may, or shall do it by Warrant under his hand and seal, there the Warrant must be under his hand and seal, or it is not good. And therefore heed must be given to our Presidents herein, where we say given under our hands and seals, and in those cases the Justice must put his hand and seal to the Warrant, or it is not well done. And for this cause we do advise the Justice to put his seal to every Warrant.

17. There is a little difference between a Warrant of Commitment and a *Mittimus*, for both are to do one thing, and they differ a little, onely in the forme, will be easie therefore to make of them by the other.

18. It is usuall to grant Warrants against offenders upon poenall Laws, to bind them over to Sessions before they be indicted of the offence, in cases where there is no special power

or

Cha. 29.

or direction given by the Statute ſo to do. But we dare not adviſe men ſo to do, being unſatisfied of the lawfullneſs thereof. But we agree it to be cleer and ſafe, that after the offender is indicted of the offence, and the bill found, or after the offence found by preſentment of the grand Jury, there it may be done, and the party offending forced to be bound over to the next quarter ſeſſions to answer it; And alſo to put in ſureties for his good behaviour in the mean time, if the offence for which he is indicted will Warrant it. As if he be indicted for ſelling Ale contrary to the Juſtices Order, or the like; ſo alſo in caſes where a Law doth give a ſpeciall command and power to any Juſtice of peace to bind over an offender to the ſeſſions, as the Statute of 5 *Eliz.* 4. touching Maſters and Apprentices. The Law of 25 *Eliz.* 10. touching hawking in eared or coddled corn, 1 *Ed.* 6. c. 1. 23 *Eliz.* 10. and ſome others do. In theſe caſes they may bind them over before indictment. But then it is beſt firſt to ſend a Warrant of ſummons to call in the party offender before the Juſtice to answer the matter, and then if he appear, and he ſee no cauſe to forbear to bind him over to do it, and if he do not appear, then he may ſend for him, and bind him over; and bind him to the good behaviour alſo for his contempt. For which there are Preſidents prepared amongſt the Preſidents ſet down in this book of Preſidents.

If one be indired for Recuſancy, the Court may proceed by proceſs upon Stat. of 23 *Eliz.* 25 in other Indirements of Treſpaſs, or by Proclam. upon Stat. 29 *Eliz.* c. 6. 1 *Cr.* 103, & 131.

If

If one be outlawed before Justices of Peace, Justices of Assizes upon Indictment of Felony, they may award a *Cap. ut Legat. 1 Cro. ib.*

19. Where a Statute doth give power to a Justice of peace, to compell men to do any thing in order hereunto, he may send his Warrant to require them to come before him, and in case of their refusall proceed as in the last case.

Two Justices of peace may require any person by speciall Warrant to come before them to take the Oath of 7 *Jac. ca 6.* called the Oath of Obedience, *B. R. Trin. 9. Jac. Reg. 1 Cro. 130.*

20. The Justices of the peace may send their Warrants for any thing that doth relate to a speciall Sessions, either to compell appearance, or attendance there, or execution of any thing there done under their own hands, if they please, or they may let it be done by the Clark of the peace, as the business of the Quarter Sessions is done.

21. What may be done by the Warrant of one Justice of the peace alone, may be known by the penning of the Presidents, for if it be penned to be made by one Justice (as *W. S. & c.* whereas it hath been proved before me, & c.) then you may be sure that one Justice of peace alone may do the thing contained in the Warrant. And whereas two are warned, there in most of the cases two are necessary.

22. The same President that serves upon a conviction by witness, will serve upon a conviction by view or hearing for *J. S.* being lawfully convicted before me, is applicable to either, and will serve to both.

23. It

Cha. 30.

23. It is a good close of every Warrant sent to an Officer, to require him to give an account how he hath executed it, after this wise; And that you be then and there with this precept, to give us account of your execution of it: or thus; And that you give me an account within fourteen days next following after your execution of the Warrant.

24. Where a Statute is penned thus, That the Constables or Church-wardens by Warrant from a Justice of peace shall be enabled to do and act in this case.

25. We conceive the Justice may justify the making of that Warrant upon a bare complaint without oath against a drunkard, or such like offender, a Justice may send to an Officer to warn him to come in before him to answer it, perhaps he may confess it.

CHAP. XXX.

Of calling Officers to account for money received to publike use.

1. **T**wo or more Justices of Peace may out of Sessions call all Treasurers High-Constables, petty-Constables or other persons who have been formerly entrusted with the collecting, receipt, or disposing of any money charged upon any parish, by the Statutes of 43 Eliz. and whereof no account hath been given, their Executors or Administrators, and order the payments of such money as shall be found

found in their hands to be paid to the present or succeeding Treasurer by them appointed, *Ord. May 1647.* 2. Any two Justices, *Quorum unus*, may call any of these Officers who have had any hand in the receiving of these monies, for the old or new maimed Souldiers, and take account of them what money is in their hands, or in the hands of any Justice of peace, Treasurer, or other Officer. 3. Two Justices, *Quorum unus*, may call Officers to account for money received for the use of the Poor. *Statute 43 Eliz.*

CHAP. XXXI.

Of Transportation.

IF any load any Vessel, with intent to transport any Fullers earth, Clay, Tobacco-pipe-Clay, or any other earth or clay, which may be used in the Art of Fulling, beyond Sea, he forfeits the things, and three shillings four pence for every pound weight. And if any owner of ground where such clay or earth is digged, be privie to the transportation, and do not discover it to a Justice of Peace, within three moneths of his knowledge, he forfeits five hundred pounds. And if the Justice of peace do not within three moneths after the discovery, return the same under his hand and seal to one of the Barons of the Exchequer, he forfeits one hundred pounds. And the owner of such ground, where such earth is digged, that shall sell

Cha. 32. sell or dispose thereof, must keep a Register Book, and enter there, to whom, and what earth he sells, and where he dwells that hath it, and once in six moneths give a note in writing thereof to one of the Justices neer the place, on pain of twenty shillings forfeit for every hundred weight.

The power
of the Justices
herein
out of Sessions.

The Justice of Peace hath nothing to do here in out of the Sessions, but to certifie the owners discovery, under the Justices hand and seal, to one of the Barons of the Exchequer within three moneths after the making thereof; and to receive from the owner of the ground where the digging is, a note in writing of the earth he doth sell, when he doth tender it to him.

CHAP. XXXII.

Of the Justices power and duty in other things.

Seff. 1.

The power
and duty of
the Justices
of peace out
of Quarter
Sessions in
divers other
particulars.
About trespasses in Orchards,
Woods, &c.

ANy one Justice of Peace, where the offence is committed, or offender apprehended, (but he that is intressed in the matter) may, upon the oath of one sufficient Witness, or the patties confession, for the first offence, appoint such recompence to be given to the party grieved, as the Justice shall think fit, by any mean or lewd person, that shall cut or carry away corn, or hay, rob orchards or gardens, break or cut any hedg, pale, rail, or fence, dig, pull up, or take away any fruit-trees, cut or spoil any woods, under-

under-woods, poles or trees standing, (not being Felony) and their procurers and receivers: And if he judge him in his discretion unable to give satisfaction, or he do not make satisfaction according to the Order, then he may make the Constable or other Officer of the place where the offence is done, or he is taken, to whip him, or cause him to be whipped. And if the Officer do not whip him, the Justice may commit the Officer to prison without bail, till he cause him to be whipped. And for a second offence, some say, (but if he be a common offender herein) the Justice may bind him to the good behaviour, and to appear at Sessions, or send him to the house of correction, 43 Eliz. 7. 7 Car.

Good Behaviour.
Bind over.

4. Dalt. 7. P. 57.

If any offender sent to Gaol by a Justice of peace, be able to bear his own charges for himself and attendance, in his convey thither, and do not pay that which is reasonable, the Justice may by a writing under his hand and seal, give Warrant to the Constable of the Hundred, or Constable or Tything man of the place where he dwelt, where his goods are, or whence he is committed, to sell so much of his goods or cat-tels, as the Justice thinks fit to satisfy it, after appraisement by four of the neighbours, rendering to him the overplus; 3 Fac. 10.

Self. 2.
About sending an offender to Gaol
V Varrant.

Any one Justice of peace may compell a man to take crack'd money, or commit him to prison upon 19 H. 7. 15.

Self. 3.
About cracked money.
Commitment.

Justices have power to hear and determine all defaults about money by the Statute of 17 Edw. 4. 1. by Cook, 2 part of his Institutes 743.

Chia. 32.

Señ. 4.

About Tile-
making.

Any one Justice of peace (as it seems) by proof of two witnesses, or by examination of the party, and his own confession, or otherwise at his discretion, may hear and determine all the offences about tyle-making, (*viz.*) if they be made of good earth, and of earth well prepared, and of due assize in length, breadth, and thickness, and may assess the fines limited by the Statute. And this, it seems, must be at a privy Sessions by indictment, 1 *Ed. 4. 4. Sed quare of this power*, for some doubt of it. *Lamb. 197. Dalt. J. P. fol. 74.*

Señ. 5.

About Souldiers
and
Mariners,
Commitment.

Any one Justice of peace, may upon the proof [which may be by witnesses,] commit to prison Souldiers who purloyn Horses, Harness, or Armour, til they make satisfaction to the owner, 1 & 2 *Ed. 6. 2. Dalt. J. P. in Chap. 52.* So one may license them after their landing, to pass to the place they would go, 39 *Eliz. 14.*

Señ. 6.

There must be two Justices to appoint what Fishermen shall be prest for Mariners, 5 *Eliz. 5.*

Señ. 7.

About Im-
rolment.

Any one Justice of peace may joyn with the Clerk of the peace in the inrolment of a Deed of Bargain and Sale, 27 *H. 8. 6.*

Señ. 8.

About
Wine.

Any Justice of peace may (as it seems) upon the request of him to whom denial of sale of Wine shall be made at the prices set down by the Lords, &c. enter into the Vintners House, and sell this Wine, and take this money towards the forfeiture for his offence, 24 *H. 8. 6.*

Señ. 9.

About Fish-
and fishing.

Every Justice of the peace is a Conservator of the Rivers, and of the Statutes concerning the same, and may appoint under-officers to look to them. And they may for the first offence, burn such Nets and Engines as destroy Fish

for

for the second offence, imprison the offender for a quarter of a year; and for the third offence, imprison him a year. And he may give a Warrant to levie the forfeitures of them that destroy the brood of Fish. *Dalt. J.P. chap. 21. 13 Ed. 1. 47. 13 R. 2. 19. 17 R. 2. 9. 3 Car. 12.*

Cha. 32.
Committ-
ments.

Six Justices of the peace, *Quorum duo*, may for a year after the granting of the Commission of Sewers, execute the same, unless a new Commission be published within the year, *13 Eliz. 9.*

Sess. 12.
About the
Rivers.

There must be two, *Quorum unus*, to license Ale-keeping. But any two Justices may license poor people to travell to *Bath* or *Buxton*. And any one Iustice of peace may give a Testimonial to such as have suffered shipwrack, Souldiers and Mariners that come from Sea, of their landing, and place to which, and time in which, they are to go, and license to travell thither.

Sess. 13.
About mak-
ing Licen-
ces or Testi-
monials, or
Certificates
Mariners.

And any one Iustice of peace may license labourers to go out of one County into another, to work in the Harvest time, *1 Jac. 9. 21 Jac. 7. 39 Eliz. 4. 39 Eliz. 17. 5 Eliz. 4* But there must be two to give a Testimoniall or license to servants that depart out of their Masters service.

Labourers.

One Iustice of peace may certifie deceivable Cloth, or the breach of the peace before him, into the Kings Bench, or any other thing done in his presence: this he may record and certifie. And this is a conviction to which no traverse lieth. Or joyn with a Customer, to certifie the unlading and selling of corn, and cattell carried from one part of the Realm into another, unto the Customer where it was laden, upon the Statute of fore-stalling.

Servants.

Sess. 14.
Cloth.
Cer:iscare.

Fore-stal-
ling.

Or may take the Submission in writing and

Gha. 32.

Popish
Priest.

Apprentice

oath of any Jesuit or Priest within three dayes of his landing in *England*, and certifie it into the Chancery, *Dalt. J.P. 49. 5 Ed. 6. 14. 13 Eliz. 25. 22 Eliz. 1. 13 Eliz. 2. 27 Eliz. 2.* But there must be three to certifie for an Apprentice, that his Parents can spend forty shillings *per annum*, upon 5 *Eliz.* But this is not necessary.

There must be four Justices to joyn with the Lieutenant, Deputy, or Bishop, to license a confined Recusant to go about any speciall business he hath to do, by 3 *Jac. 5.*

Sess. 16.

About the
counterfeit-
ing of false
tokens.

There must be two, *Quorum unus*, to call in, anach, examine, imprison, or bind them and the Witnesses to the Sessions, such as by false tokens or Letters in others names, shall get into their hands any money or other things, 33 *H. 8. 1. Dalt. J.P. 117.*

Sess. 17.

About the
dividing of
a Wood.

There must be two, or more, to divide the fourth part of a Wood, being appointed thereunto by the Sessions, upon the Lords complaint, 35 *H. 8. 7. 13 Eliz. 21.*

Sess. 18.

About wax.

Any Iustice of peace may examine and search by his discretion, and punish by forfeiture of the work, or value thereof, and fine to the Commonwealth, such as do sell, or offer to be sold any Candles, or other works of Wax, at a higher rate than four pence the pound, over the common price of plain wax between Merchant and Merchant, 21 *H. 6. 12.*

Sess. 19.

About Leg-
wood in
dying.

Any one Iustice of peace upon complaint that any Dier is suspect to use Blockwood, or Logwood in dying; he may call him before him, and examine him or his servants on oath, and if he find any thing, he may bind him with Sureties, and the Witnesses to the next Quarter

Sessions

Sessions or Gaol delivery, whether he must certify the examination. And if he refuse to be bound, send him to Gaol till he do it. But there must be two Iustices to give power to burn the stuff, when it is found in any mans house, 23 *Eliz.* 9. 39 *Eliz.* 11.

Cha. 32.
Bind over,
Committ-
ments.

If the owner or occupier of any Manner-house or lands in the County, worth five pound a year, refuse to pay him that taketh old Crows, Choughs or Rooks upon his Land, after two pence a dozen, upon complaint, any Iustice of peace may cause it to be levied by distress upon his goods and chattels, 24 *H.8.* 1.

Self. 20.
About kil-
ling crows,
&c.

If any Statute enable one Iustice of peace to take an Inquisition, he may take it; otherwise there must be two Iustices of peace to take an Inquisition.

About ta-
king of an
Inquisition,

Any two Iustices may charge double and punish according to their discretion, such as escape taxations at Subsidies, 3 *Car. Lamb.* 336.

About such
as escape
Subsidies.

Any one Justice of peace may direct the Constable, to sell such deceitfull Malt as he upon search shall find, at such prizes as the Iustice shall think fit, 2 *Ed.* 6. 10. 27 *Eliz.* 14. 2 *Iac.* 28. 3 *Car.* 4.

Self. 21.
About Malt.

The restraint of Malsters must be at the Quarter-Sessions by order. But any two Iustices of peace may, upon confession, or by two witnesses, convict him that doth disobey this Order, and commit him to Gaol three dayes, and after till he become bound in forty pound, to obey the Order: and this Recognizance any one Iustice of peace may take, 39 *Eliz.* 16.

Any one Iustice may give the Surveyors of the high-ways upon the new Ordinance their

Cha. 23.

oath thus; You shall swear that you shall diligently and faithfully execute the office of Surveyor of High-ways within the parish of D. for this year ensuing, and faithfully account for all monies which shall come to your hands by virtue of the said office.

Peace.
Oath.
Constable.

Any one Justice of peace may give the Constable his Oath. Which must be thus;

You shall swear that you shall well and truly execute the Office of High-Constable of and within the Hundred of H. or of Petit Constable for and within the Parish of S.S. and Liberties thereof, to the best of your skill and power, untill another be chosen in your room, or you shall be otherwise discharged by Order of Law.

Sheriff and
Bailiffs.

There must be two, *Quorum unus*, to give the Sheriff his oath for his office, and this they may do *ex officio*, and without any Commission. So also to give the oath to his Bailiffs of Liberties, known Bailiffs Deputies, and Clerks, that shall have to do in returning of any Jury, or execution of any Process, who ought to be sworn; otherwise of special Bailiffs. 27 *Eli. 12. Dalt. J. P. 166.*

Collectors
of Amercements.

Any two Justices may give oath to the Collectors of the Sheriffs Amercements for his County Court, that they shall collect no more than due. *Dalt J. P. 166.*

Him that is
robbed.

Any Justice may give him an Oath that is robbed, and examine him whether he knew him that did the robbery, and if he do, he must take a Recognizance of forty pound of him, to prosecute upon 27 *Elix. 13.*

About them
that have
the plague.

Any one Justice of Peace may compell him that hath the Plague to keep in, and if after command he refuse, albeit he have not the fore
upon

upon him, he may punish him as a Vagabond, and bind him for a year to the Good Behaviour. And one Iustice may also according to his discretion, appoint Searchers, Watchmen, and keepers, &c. But there must be two to set a Rate for the relief of the persons infected. See Rate. 1 Jac. 31. 21 Jac. 28.

Cha. 34
Vagabond:
Good Be-
haviour,
Rate.

Any one Iustice of peace may enter into any house within or without any Liberties, that is suspect to have dicing, carding, or any other unlawfull games used in it, and upon view thereof, arrest and imprison him that keepeth them, except ye have the keepers of the liberties license. And he may arrest and imprison all Artificers, Husbandmen, Labourers, Mariners, Fishermen, Watermen, Apprentices, servants, and others whatsoever, that play at any unlawfull games at any time, or in any place, but at Christmas, or in their own, or Masters houses, garden, & orchard, and by their Masters license. And any men that shall play at Bowls in any place, but his own garden or orchard, untill they give Sureties in such a sum as the Iustice of peace shall think fit, that they will play no more 33 H. 8. 9. 31 Eli. 5.

Seal. 23.
About un-
lawfull
Games.
Com. nit-
ments

Any one Iustice of peace may according to his discretion, examine all persons that have not Bowes, Shafts, and Arrowes, according to the Statute of 33 H. 8. 9. But the offence it seems, if it be punished, must be punished in a Sessions.

About Ar-
chery.

Sessions.
About Guns.

Any one Iustice of peace upon examination (which must be as it seems of the party) and proof, may commit to Gaol him that is found to shoot in, carry, keep, use, or have in his house, or else-where, any Guns, Cross-bows, Dags, Pistols, or stone-bowes, contrary to 33 H. 8. till

Commit-
ment,

Cha. 23. he pay his ten pounds; the Estreat whereof he must send into the Exchequer. *Dalt. J. P. ch. 24.*

Hares.

Commitment.

**Pheasants,
Partridges,
&c**

**Greyhound,
Settingdogs,
Nets.**

**Warrant, to
Search.**

And over.

But there must be two Iustices of peace to commit for three moneths without bail, unless he pay twenty shillings a Hare, &c. he shall kill; forty shillings for a Grey-hound, setting-Dog, or Net, and give bond of twenty pound, with two sureties, within a moneth of his commitment, not to offend again: him that shall shoot at, or kill with gun or bow, any Partridge, Pheasant, House-dove, Pigeon, Hearn, Mallard, Duck, Teal, or any such Fowl, or any Hare; or shall take or kill any Partridge, Pheasant, House-dove or Pigeon, with any Engine or Instrument, or take or destroy the eggs of Pheasants, Partridge or Swan, or trace any Hare in the snow, or take it with any cords, or keep any Grey-hound, setting-Dog or Net, being proved by confession, or oath of two witnesses.

Any two Iustices of peace may by 1 *Jac. 27.* & 7 *Jac. 21.* hear and determine out of Sessions, any offences for destroying Partridges and Pheasants, &c. But he that is convict upon the 23 *Eliz. 10.* for taking Pheasants and Partridges in the night, may be bound by any one Iustice of peace not to offend so again in two years.

And two Iustices of peace may give Warrant to search the houses of persons suspect, and disabled to keep setting-Dogs, or nets, and to kill the Dogs, and cut the nets in pieces that they find, 7 *Jac. 11.*

Also any one Iustice of peace may examine him that killeth Partridges or Pheasants in the night, and hath not been punished for it, and take bond for his appearance at the next general

all

all Sessions of the Peace, to answer the offence, **Cha. 3.**
upon 23 *Eliz. 10.*

He that hath free Warren, Mannor, or free Land of forty pounds, or Lease for life of four-score pounds *per annum*, clearly in his own or Wives right, or four hundred pounds goods or chattels, may take Partridges or Pheasants in his own land, by 7 *Iac. 11.*

Any one Iustice of peace may examine the offences about Hawking or Hunting with Spaniels in Corn, &c. and may bind over the offenders with good Sureties, and Witnesses to appear at the next Quarter Sessions, and on refusal send to Gaol, upon 23 *Eliz. 10.* & 7 *Iac. 11.* *Dalt. I. P. ch. 25.*

And so upon proof of two witnesses he may take a Recognizance of such as take Partridges with setting-Dogs or nets, upon 7 *Iac.* But there must be two Iustices of peace that must within six moneths of the offence, commit to Gaol a moneth without Bail, unless he forthwith pay forty shillings a time, and twenty shillings a Pheasant or Partridge, him that by confession or oath of two Witnesses is proved to hawk or hunt between the first of *July*, and last of *August*, 7 *Iac. 11.* So they may punish them that sell, or buy to sell again, any Deer, Hare, Pheasant, or partridge, upon 1 *Iac. 27.* 21 *Iac. 28.* So there must be two upon confession, or oath of one Witness, to send to Gaol for three moneths without bail, unless he pay forthwith to the Churchwardens or Overseers of the poor, twenty shillings a pheasant, or partridge, him that takes, kills or destroyes any pheasant or partridge, with setting-Dogs, Nets, or other

About Hawking.
Bind over,

Commitment,

Recognizance,

Commitment,

Commitment,

Cha. 32.

other Engines. Yet one Justice may take a Recognizance of twenty pounds of such an offender, that he shall not offend again, 7 *Jac.* 11. He that is punished upon this Law, must not be punished by any other Statute.

About hunting.

Any one Justice of peace upon Information that any one hath hunted Deer or Conies in the night disguised, may send his Warrant to the Sheriff, or other Officer, to bring them before him to be examined. And finding cause, may

Warrant,

Bind over.

bind him to the Good Behaviour. But there must be two Justices of the peace to commit to Gaol them that trace and kill Hares, upon 1 *Jac.* 27. *Dalt. J. P. ch. 29.*

Commitment,

Se^t. 24.

About fish-
dayes.
Search,

Every Justice of peace in the Lent time, may enter into and search all Victualing-houses for flesh: and if he find any till three dayes before Easter, seize it, and give it to the prisoners, or poor, at his discretion, 1 *Jac.* 29. 5 *Eliz.* 5. 35 *Eliz.* 7. repealed.

Se^t. 25.

About an
Egyptian,

Any Justice of peace, Sheriff, and Escheator, may seize all the goods of any Out-landish person, calling himself an Egyptian, within one moneth after his arrivall into this Realm, and keep half to his own use, and for the rest must account to the Exchequer. But after the moneth, the King will have all, 22 *H.* 8. 10. but some doubt of this Law, and see *Dalt. J. P. 6. 19.*

Set a rate to
have a con-
tribution for
any of the
Hundred
charged
with the
whole exe-
cution.

When a Recovery is had against a Hundred, and execution made on some persons therein, any two Justices lying neer the place, *Quatuor unus*, may set a Rate upon the Parishes of the whole Hundred, as well within as without Liberties, upon the distribution thereof by the Constables on every Inhabitant, force the levy-
ing

ing and bringing in thereof to them by distress and sale of goods, to be done by the Constables and Iustices; having received it, they are to see that the parties grieved have it.

So also they may do upon another Hundred where it is charged with a moiety of such a charge upon a Hundred for any defect or neglect of pursuit of hue and cry, &c. towards the case of the Hundred, first charged, 27 Eliz. 13.

CHAP. XXXIII.

Of Recognizances.

AS touching this point of Recognizances, these things are to be known; 1. Justices of peace do in some cases take Recognizances in congruity to other things; as for the Peace, and Good Behaviour, and the like. And they have power given to them by divers Statutes to bind over men to appear at Sessions, Assizes, &c. and to take sureties for other causes. And some think, where they have power to require a man to do a thing, they may in congruity bind the party to do it, and if he refuse send him to Gaol. *Dalt. 7. P. ch. 16.* But take heed of this.

The power and duty of Iustices of Peace herein out of Sessions.

Bind-over.

2. One Justice of the peace may take Recognizances for the peace or good Behaviour, for mens appearing at the Assizes, Sessions, &c. to give Evidence, of such as keep or use unlawfull games, that they shall do so no more: of such as are suspect to use Logwood in dying, and their witnesses: of such as take Partridges, and Hawkers

Cha. 33. Hawkers in Corn, that they shall appear at Quarter Sessions: of such as are convict for taking or killing of Pheasants, Partridges, &c. that they shall do so no more: of the Master that shall abuse his Apprentice, to appear at Quarter Sessions.

But there must be two to take Recognizances of Alehouse-keepers: to bail a prisoner liable for Felony: to bind Overseers of Cloth.

Bind over,

3. Justices of peace (as it seems) cannot bind over an offender against a penall Law, referred to their consuance (but not within the Commission of the Peace, nor committed to the power of any Justice of peace) except it be in a speciall case, where the Statute it self doth enable them thereunto, as 5 *Eliz.* 4. 1. *Edw.* 6. 1. or the party is indicted for the offence.

Recognizance.

A Supersedeas made by a Justice of peace, and returned under his seal, is a sufficient Record to prove a Recognizance taken for the Peace, and Warrant to call the party bound, and if he make the default, record the same, *Lamb. I.P.* 97.

Appearance

5. If one be bound by a Recognizance, he must appear according to the tenor of the same; and if a *Certiorari* come to remove it before the day, this will discharge it. *Dalt. I.P.* 237. *Lamb. I.P.* 336, 386.

6. The Justices of the peace must certifie all the Recognizances they take to the next Assizes or Sessions, 3 & 6 *Ed.* 6. *ch.* 25.

CHAP. XXXIV.

Of a *Supersedeas*.

THis Writ is a command to stay the doing of that which in appearance were to be done, were it not for the cause whereupon the Writ is granted. As if one swear and desire the Peace, the Justice cannot deny it; but if the party be formerly bound elsewhere, this Writ lieth to stay the Justices from binding the party. And it comes either from the Chancery, or Kings Bench, or from one or more Iustices of peace.

The Office and duty of the Iustices of Peace herein out of Quarter Sessions.

2. No *Supersedeas* that comes out of the upper Bench, or Chancery, is to be allowed by the Justices of peace, but what is granted upon publike motion in the Court whence it issues; and good bail there given; See 21 *Inf. 8*. And unless it appear that the process is prosecuted against the desirer of the *Supersedeas*, *bona fide*, by some grieved in the Court, whence it is to come.

Motion in Court. Bail,

3. He that doth take Sureties, *ex officio*, after a Warrant out, and thereupon grant a *Supersedeas*, must be sure he do it according to the Justice of peace his Warrant sent out. *Lamb. I. P. 96. Dalt. I. P. 172*. Where he hath taken Sureties of the peace or good behaviour, either of his own authority, or a man brought to him by the Warrant of another Justice of peace, he may grant this Warrant to all other Iustices of peace,

Cha. 34. peace, shewing that he hath given sureties, &c.

4. Albeit it be good to recite the sureties names, and the sum wherein he is bound, yet this is not necessary, 2 *H. 7. 1.*

5. If any Officer have any Warrant from a Justice of peace to arrest a man to find sureties, and shall after receive this Writ from the upper Bench, Chancery, or any Justice of the Kings Bench, or Justice of peace of the Countrey, and yet he urge the party to find the sureties, he may refuse to give it, and if he arrest him, have false imprisonment.

False imprisonment.

6. This doth discharge the Justice of peace Warrant to require surety of the peace, or good behaviour. If therefore the Justice receive such command from above, and he have not sent his Warrant, he must forbear to send it; if he have sent it, he must supersede it.

7. If a Justice or other Officer will not forbear after they have received it from Chancery or upper Bench, he may be fined and imprisoned for his contempt: Yea so it is, albeit the *Supersedeas* be illegal, *Dalt. 7. P. f. 207, 208.*

6. If it be sent to the Justices and Sheriff, the Justice may keep the Writs and deliver the Label to the Sheriff.

An *Alimus capias*, or *Exigent* awarded against one indicted of a Trespass, or the like, upon surety found in the Chancery, may be stayed from thence, or the Sheriff commanded not to arrest him; or if he be arrested, to take sureties of him and let him go. So when he hath given sureties *de fine assedendo*, two Justices, *Quorum unus*, (some say one Justice) may grant a *Supersedeas*, *Lamb. 7. P. 526, 527.*

10. The *Certiorari* to remove the record, is in it self a *Superfedeas*, but a man may have a *Superfedeas* to the Sheriff also, Lamb. J.P. 515.

CHAP. XXXV.

Of a Supplicavit.

THis Writ is a command out of the Chancery or upper Bench, to one or more Justices of the Peace, to binde some person to the Peace or good Behaviour. For which, see *Dalt. J.P.* 226, 227. And know these things.

1. He only to whom it is delivered, must execute it.

2. The Justice that receiveth the Writ, is to make his Warrant to the Constable, or other indifferent person: and if he refuse to find sureties, to carry him to prison.

3. The party attached must be bound before him that sent out the Warrant, and none other.

4. The Justice is to execute it as he directeth.

5. If the sum he left to his discretion, it is good to set a good sum.

6. After sureties taken, the Justice may make a *Superfedeas*.

7. The Justice need not return it, nor make a Certificate till a *Certiorari* come. *Dalt. J.P.* 286, 287.

The Office and duty of the Justices of Peace herein out of Quarter Sessions.

Warrant, Commitment.

Superfedeas

CHAP. XXXVI.

Of a *Mittimus*.

The power
and duty of
the Iustices
out of
Quarter
Sessions.

THe *Mittimus* is the Warrant by which the prisoner is sent to the Gaol, &c.

Touching which, these things are to be known.

1. This instrument must be in writing and under hand and seal. But if the commitment be by Order of Sessions, there needs no such solemnities.

2. The names of the party committed, the time of making it, the cause of the commitment must be set down and expressed in it, as for Treason, Felony, suspicion thereof, that it may appear whether the prisoner beailable or not, and that those that have the custody of him may take care of him; for if the cause be set down to be Treason or Felony, it is so in the Officer to suffer him willingly to escape whether he be guilty or not, otherwise if no cause be expressed, it is no offence. 3. If it be a commitment to the house of correction onely, the *Mittimus* must express the cause, as because he is an idle person, or an inordinate person, or the like. *Cook 2 part Instr. 52.* 4. If the Commitment be without Bail or main-prize, and it express the cause, which is a case wherein he isailable by Law, it seems the other Iustices of peace may bail him.

CHAP. XXXVII.

Of a Cerciorari and Habeas Corpus.

AS touching these Writs (which are to remove Records and Prisoners before the Justices of Peace) these things in reference to the Office of the Justice of Peace are to be known ; 1. These Writs are obtained by those that are indited, or prosecuted before the Justices of peace, or out of the Sessions, and are sent to the Justices to remove the Records and prisoners before them into a higher Court, and before Higher Judges, to the end that by traverse, demurrer or otherwise, the matter may be ended there. And sometimes to send the Record, and sometimes to send the tenor of the Record onely. And it is good though it do not mention any cause of removall. *Lamb. J. P. 414.* 2. A Justice while he is in his Office may without a Writ send up an Indictment taken before him, but when he is out of his Office, he cannot send without a Writ to remove it. 3. This may be had out of the Chancery, Kings Bench, or common Bench. 4. It may be directed to the Court of the Sessions, or to all, or to any one of the Justices of peace, or other Officer. 5. This must be obeyed if it be duly granted according to the tenor of it, or otherwise an *alias pluries*, and at last an Attachment or Subpcena will issue forth against the Justices or Officer for their contempt. And yet if any Bill of Indictment for Ryt, forcible entry;

Cha. 37. entry, assault or battery found before the Justice at their Quarrer Sessions, be sent for, and the Writ gotten out at the suit of the party indicted, the Justices may refuse to allow it, unless the Writ be delivered in open Court at a Quarter Sessions, and the party indicted be bound with such sureties as the Justices shall think fit in ten pounds to the prosecutor, to pay him within a moneth after the party is convicted, such costs, and damages as the Iustice of peace shall set down, *Stat. 21. Jac. 8.* 6. No Writ of *Habeas corpus* or *Cerciorari* to remove a prisoner, or Recognizance ought to be granted, unless the hand of the chief Justice, or in his absence of one of the Judges of the Court whence it comes, be to it. But if it be granted otherwise, the Writ is good and must be obeyed. 1, 2, *Ph. M. cb. 13.* 7. If there be any variance between the Record, that is before the Justices, and the Writ sent to remove it, the Iustice is not bound to send it. 8. If the Writ command the sending up of an Indictment against A, and there be others indited in the same Indictment, he need not mention any of the rest in the Certificate. 6 *Ed. 4. 5.* 9. If the Writ be brought and duely delivered in, the Record must be sent up although the prosecutor never call for it? for, as some say, this in it self is a *Supersedeas*. But the prosecutor may also have a *Supersedeas*, if he will, out of the same Court whence he hath his *Cerciorari* or *Habeas corpus*. *FNB. 237.* 1 *H. 7.* 10. If the *Cerciorari* come and be dated before the Indictment, the Indictment, coming in after, may and must be removed by it, *F. 71. Crompt. Dalt. Inst. 2 H. 7.* 11. It is not to be sent immediately

diately into the Kings Bench by this Writ, but first into the Chancery, and from thence into the Kings Bench by a *Mittimus*. *FNB.* 242. *Lamb.* 591. 12. That which is sent for in Chancery saith in Chancery, in the Kings Bench it is that you send to us. 13. The Certificate must certifie, and expresse that which did authorise the Iustices to make the Record, but need not certifie more than the *Cerciorari* requireth. 13. If an Indictment to be sent up by a *Cerciorari*, the Iustices must take care how they certifie it, or it may be quashed for insufficiency of Return. *Lamb. I.P.* 516.

CHAP. XXXVIII.

Of the conviction and Tryall of Offenders.

IN this these things are to be known: 1. An Offender may be attaint or convict many wayes. The Attainder or conviction by the common Law, is for the most part by Indictment and a Jury, and cannot be otherwise. For Trial by examination, and witnesses, are not allowed but where the Trial is referred to the discretion of the Justice of peace, or the Statute doth especially authorize him so to do, as it doth in many cases; for by divers Statutes the conviction of an offender may be after divers wayes, and it must be according to the Statute, and cannot be otherwise. Sometimes it may be before one; sometimes it cannot be before less

The power and duty of the Iustices of Peace herein out of Quarter Sessions. Indictments Examination.

Cha. 38.
Sessions.

than two Justices of peace. Sometimes it may be out of any Sessions, sometimes it must be at a private Sessions, and sometimes it cannot be done any where but in the Quarter Sessions. Sometimes it is by the Justices one view or hearing, sometimes it cannot be done but by other proof. But where the Statute doth not direct the way, but say, Justices shall hear and determine, and say not how, or where, as 26 H. 6. 10. 5 Eliz. 9. There it must be by the ordinary way, which is by indictment. And so it may be also, if the Justice please, where it may be done another way, *Dalt. J. P. f. 193.*

2. Some Statutes speak of conviction by inquiry, some by inquiry and examination: some say by inquiry or examination. In all these cases regularly the Justice of peace is to examine the offenders and witnesses. *Dalt. J. P. fol. 191.* But if it be by examination only, as 4 Ed. 4. 2. Then it seems the offender is to be examined. *Young 40.* And so it seems may the witnesses also. 21 Jac. 18. 18 Eliz. 3.

3. Sometimes the Statutes speak of proof, and then it must be by proof of witnesses only, *Dalt. J. P. f. 191, 192.* Sometimes it is by examination and proof.

4. If the Statute say, by accusation generally; it must be by examination of witnesses upon oath, *Dalt. J. P. f. 191, 192.*

5. Sometimes the Statute directs the Conviction to be by two witnesses, or confession: sometimes by witnesses or view, sometimes by view or hearing only, sometimes by two witnesses, view or confession; sometimes by view or indictment, sometimes by view or inquiry; some

sometimes by one witnesse, view, or confession; sometimes by one witnesse, or view, and after confession of an Offender by his own Oath; sometimes by one witnesse, or confession; sometimes by view or information; sometimes by proof of one witnesse; sometimes by proof of two witnesses; in all cases the direction of the Statute is to be followed. If the Statute speak of witnesses, it cannot be lesse than two (except the Triall be by Jury,) where happily one may serve, *Dalt. J. P.* 192.

It is convenient in all cases, especially where the conviction is by oath of witnesses alone, that the offender be heard before he be convicted. But this, it seems, is not necessary, *Dalt. J. P.* 191. See more in Chap. 2. of this Book.

CHAP. XXXIX.

Cautions to Justices of Peace.

They are to take care of their carriage, for they may be punished as any other man, and that in this Court of the Quarter Sessions also, 4 *H. 7. 12. Dalt. J. P. ch. 20.* especially in these particulars. Sessions.

1. Where they have power to hear and determine out of Sessions, by their own view, confession of the offender, or proof of witnesses, these things must be heeded: 1. To make and keep by them a Record of all the proceedings, especially if there be a Commitment.

Cha. 39.
Estate.

2. If the offender be to be fined, then to
Estreat it, and send it into the Exchequer, *Dalt*
7.P.f.190.

Certificate
of Recogni-
zances.

3. They must return all their Recognizances
for the keeping of the Peace, and otherwise,
(Recognizances to answer for Felony excepted,
which must be certified to the next Gaol
delivery. *Ut supra.*) at the next Sessions of
the peace for the County, 5 & 6 *Edw.6.15.*
3 *H.7.1.*

Certificate
of an oath
of a Papist.

4. He that takes the oath and submission of a
Priest or Jesuit within three dayes after his lan-
ding in *England*, and doth not certifie it in three
moneths in Chancery, loseth an 100 pound, by
27 *Eliz.2.*

Riots.
Conceal-
ment,
Spil,
Felonies,
Recogni-
zances.
Certificate.

5. They must take heed of all neglects which
are penall to them; as not to execute the Sta-
tutes against Riots and forcible Entries, upon
notice; not to discover Treason, Seminaries, *Ag-
nus Dei, &c.* to bail such as are notailable, to
discharge Felons, to take any Recognizances
otherwise than in the Kings Name, not to cer-
tifie Recognizances at the next Assizes or Ses-
sions, not to meet at Easter Sessions, not to cer-
tifie the examination of the Sheriff, and his Bai-
liffs in entring plaints, &c. into the Exchequer,
not to present at the next quarter Sessions, the
offences which the Surveyors of the Highways
have presented to them. *Dalt. I.P.ch.20.fol.73.*
11 *H.7.15.* 13 *Eliz.2.* 29 *Eliz.2.*

Presentment

He forfeits an hundred pounds if he be faulty
in the execution of the Statute against Riots,
13 *H.4.7.* 17 *R.2.8.* And may be punished for
neglect of that against forcible Entry. *Dalt. I.
f.72.* Twenty pound, if he certifie not the Juries
fault,

fault, upon 19 *H.7.13.* Imprisonment, if he take a Recognizance in his own name, 33 *H.8.38.* Such fine as the Justices of Gaol-delivery shall set down, if he take bail contrary to Law, or do not certifie the bail and the examination, 1 & 2 *P.& M.13.* Five pounds, if he do not his duty for the Poor, upon 14 *Elix.5.* Cha.40.

And the Justices of Assize may punish the defaults of the Justices of Peace, 2 *R.3.10.*

CHAP. XL.

The reward of Justices of Peace.

THEY are by their Oaths to take nothing but of the State, and what is given them by the Statutes, which are their Wages for their coming, and charges at Quarter Sessions, which the Sheriff is to pay them, by 14 *R.2.11.12 R.* Sheriff. 2.10. out of the fines and Amercements, 5 *Elix.4.* And they are to have four shillings a day apiece, and their Clerks two shillings for this service. And they are to have five shillings a piece for every day, not exceeding three, they sit upon the execution of the Statute of Labourers, by 5 *Elix.4.* They are to have the tenth of the forfeiture of him that doth offend against the Statutes by Deer-hayes, Buck-stals and stalking, 3 *Ed.6.2.* The one half of the forfeiture of him that being by them appointed, refuseth to be an Overseer of Cloth, 39 *Elix.20.* And a third part of the faulty Cloth, upon 3 *Ed.6.2.* And the one half of the goods of an

Cha. 40. Egyptian seized, by 22 H. 8. 10. Twelve pence upon the Inrolment of every Deed of Land, of forty shillings *per annum*; and two shillings six pence if the Land be above forty shillings a year, 27 H. 8. 16.

The King is to bear their charge in the execution of the Statutes of 13 H. 4. 7. 2 H. 5. 8. about Riots, and they are to receive it from the Sheriff out of the Fines, *Dalt. J. P. f. 141.*

Forcible Entry.

The party grieved and prosecuted, is to bear their charges in execution of the Statutes of forcible entry, of 8 H. 6. 9.

Pleading.

If they be sued for any thing done in the execution of their Office, they may plead the generall issue, and give the matter in evidence.

Treble damages.

And if they be quit, they shall have treble damages, 7 Jac. 3.

They cannot be sued for any thing done in their Office out of their County, 21 Jac. 12.

Whatsoever they shall do of record, or ignorantly, and for want of knowledge, they shall not be punished for it: nor for matters by them judicially done, 2 R. 2. 10. 2 Regul. à iudicio *Judicis non est recedendum.*

This must be understood in their Courts of Justice.

Speciall power of Justices in some Counties.

In *Norfolk* 27 Eliz. 24.

In *Suffex* 27 Eliz. 9.

In *Surry* 27 Eliz. 9.

In *Kent* 27 Eliz. 9.

The Table.



An Alphabetical Table of the principall things con- tained in this Book.

Account of Overseers of the Poor, chap. 20. sect. 8. Of
such as have money for Apprentices, ch. 21. f. 12. Of Sur-
veyors of High-ways and Bridges, ch. 28.

Affrayors, *see* Peace, and surety of the Peace, ch. 9. &
ch. 17.

Ale-houses, and Ale-house-keepers, ch. 18. f. 2. How to sup-
press them, ch. 1.

Apparance to a Recognizance necessary, ch. 17. f. 10, 12.

Apprentices, ch. 21. f. 4, 10 ch. 20. f. 10.

Archery, ch. 32. f. 23.

Armour, ch. 11. f. 2, 8. ch. 14. f. 5. ch. 25. f. 2.

Arrest, ch. 11. f. 2, 8. ch. 11. f. 2. ch. 13. ch. 14. f. 5. ch. 15. f. 4.
ch. 2. f. 2. *see* Imprisonment.

Assessment, *see* Rates.

Authority, The opposers and refusers thereof, ch. 11 ch. 14.
f. 5. ch. 17. f. 4. *See* Good behaviour.

B

Bail grantable or not, and how, ch. 25. ch. 8. f. 5, 8. ch. 23. f. 3,
4, 5. ch. 38.

Barretor : ch. 17. f. 4.

Bastards : Provision for them, ch. 19. f. 2. Punishment of their
parents, ch. 19. ch. 20.

Behaviour.

The Table.

Behaviour. Surety of the good behaviour grantable; where, how, by, and to whom, and for and against whom, chap. 17. sect. 3. ch. 19. f. 2. Against a Master or servant, ch. 21. f. 10. A witness refusing to give evidence, ch. 29. f. 1. ch. 10. f. 7. ch. 17. f. 4. A Hedge-breaker, ch. 17. f. 4. Him that hath the Plague, ch. 32. f. 22. Him that doth commit a Riot, or forcible Entry, ch. 13. f. 7. ch. 15. f. 4. ch. 17. f. 2, 4. A Cheater, ch. 17. f. 4. One of evil name, ch. 17. f. 4. A Felon, ch. 17. f. 4. A Barretor, ch. 17. f. 4. A Libeller, ch. 17. f. 4. One that doth practise to payson, ibid. A common Peace-breaker, ib. An incontinent person, ib. ch. 20. f. 1, 2. A Conspirator, ch. 17. f. 4. One that doth abuse or oppose Authority, the Officers or Ordinances of Law, ib. An Ale-seller, ib. An Evesdropper, ib. A Night walker, ib. A common Affrayer, ib. A disturber of a Minister, ib. A Drunkard, ib. He that goeth not to Church, ib. A destroyer of a Fish-pond, ib. A reporter of false news, ib. Idle livers, ib. Breach of this Bond, ch. 17. f. 11. Discharge thereof, ch. 17. f. 10, 12.

Binding over, where and how it may be, ch. 29. f. 2. ch. 32. f. 19. Of a Felon, ch. 10. f. 4, 8, 11. Of an Officer for not taking or not executing his Office, ch. 24. f. 3. Of a Master or servant, ch. 21. f. 10. Of a Hunter, &c. ch. 44. f. 23. Of a Trespasser, ch. 32. f. 1. Of a Witnesse, ch. 32. f. 23. Of a Prosecutor, ch. 10. f. 7.

Bridewell, who to be sent thither, ch. 25. f. 2. ch. 22. f. 10. ch. 18. f. 2. ch. 19. f. 1. ch. 21.

Bridges, ch. 28. **Chepstow Bridge,** ch. 28. f. 2.

C

Certiorari, ch. 14. f. 6. ch. 37.

Certificate, ch. 35. f. 5. Of a submission, ch. 9. Of deceitfull Cloth, ch. 32. f. 14. Of a Recognizance, ch. 17. f. 9. & 32. f. 28. Of a presentment, ch. 28. f. 2. Of a Record, ch. 15. f. 4. Of lack of distresse, ch. 18. f. 2. Of an Oath, ch. 38.

Cheater, ch. 17. f. 4.

Children,

The Table.

Children, *see* *Bastards*.

Churchwardens, *see* *Constables*.

Clerk of the Market, ch.27.f.2.

Cloth and Clothiers, ch.23.f.11. ch.32.f.14.

Commitment, or Imprisonment, ch.25. *Of a Felon*, ch.10.

f.6. ch.25.f.2. *Of a Recusant*, ch.9. of one that doth ride armed, ch.25.f.2. of one that doth refuse to undertake, or to execute his Office, ch.24. ch.25.f.2. of a Servant, Apprentice, and Labourer, ch.21. f.2, 16. ch.25. f.2. of one that hath a Bastard, ch.19.f.1, 2. of a Hunter, ch.25.f.2. of a Rogue, or Loyerer, ch.21.f.10. ch.25.f.2. of him that useth a Gun, ch.25.f.2. ch.32.f.23. of him that eateth flesh on a Fast-day, ch.25.f.2. of him that committeth a Riot, Forcible Entry, &c. ch.14. f.5. ch.15. f.4. of him that disturbeth a Preacher, ch.25. f.2. of a perjured person, ch.25.f.2. for a Fine, ib. of a mad man, ib. of a false prophesier, ib. of a fore-staller, ib. of a forger of Deeds, ib. of one that keepeth an house of unlawfull games, ch.30.f.2. ch.32.f.23. of an Hostler, ch.25. f.2. of him that doth not obey the Justices Order, ch.25.f.2. ch.32.f.21. of him that payeth not his Rates, ch.25.f.2. ch.24.f.2. of a Malster, ch.25.f.2. of one bailed, ch.25.f.4. of him that refuseth to be bound over, ch.25.f.4. ch.32.f.23. ch.25.f.2. of him that refuseth to account, ch.28.f.1, 2. of a Souldier for purloyning Arms, ch.32.f.6. of him that refuseth to give Evidence, ch.10.f.7. of him that breaketh the peace, ch.25.f.2, 4. of an Ale-seller, or Tipler, ch.18.f.1, 2. ch.25.f.2. of a person that is suspected of Felony, ch.25.f.2.

Concealment, ch.38.

Conspirator, ch.17.f.4.

Constable, *His Office and duty*, ch.18.f.1. ch.17.f.7. ch.12.

f.1. ch.18.f.2. ch.22.f.1.

Conviction of an offender, ch.38.

Correction: House of Correction, *see* *Bridewell*.

Counterfeiters of false tokens, Letters, &c. ch.32.f.16.

Crowes

The Table.

Crowes, ch.32.f.20.

D

Drunkards, ch.17.f.4. ch.18.f.2.

E

Egyptian, ch.32.f.25.

Estreats, ch.14.f.5. ch.15.f.4.

Enquiry, ch.14.f.5. ch.15.f.4.

Escape, ch.26.f.5. ch.26.

Examine, ch.37. ch.10.f.3. ch.25.f.7.

Evesdroppers, ch.17.f.4.

F

Families, *such as run, or threaten to run away from them*, c.22.

Felony and Felons, ch.10. ch.17.f.4. ch.25.f.2.

Feme Covert, *see Women*.

Fine, *where and how*, chap 14 f.5. ch.15.f.4. ch.28.
sec. 1.

Fishers, *see Hunters*.

Fowlers, *see Hunters*.

Forcible Entry, ch.14.

Forestaller, ch.25.f.2. ch.32.f.15.

G

Gaoler *refuse prisoner*, ch.15.f.6.

Games, *unlawfull Games and Gamesters*, ch.23.f.2. ch.
32.f.23.

Guns, ch.32.f.23.

H

Hares, *see Hunters*.

Hawkers, *see Hunters*.

Wedge-breakers, ch.17.f.4.

Heresie, *see Blasphemy*.

High-ways, ch.28. *to speed their amendment*, ch.1.

Horse, ch.15.

Hoflers,

The Table.

Hoflers, ch.25.f.2.

Hunters, Hawkers, Fishers, &c. ch.32.f.11,23.

Hue and cry, ch.10.f.1. ch.17.f.4.

I

Jesuites, *see Recusants.*

Idle-livers, *see Loyerers.*

Imprisonment, *see Commitment.*

Inrolment, ch.32.f.8.

Incontinency, ch.17.f.4. ch.25.f.2.

Indictment, ch.14.f.5.

Infant, ch.21.f.1,4.

Inordinate person, *see Idle-livers.*

Journey-men, *see Servant.*

Justices of Peace, *generall and particular directions for them,*
ch.1. *their power in generall,* ch.2. *their danger, and cau-*
tions to them, ch.38. *their reward,* ch.39. *abusers of them,*
ch.17.f.4.

L

Labourers, *see Servants.*

Larceny, petit Larceny, ch.10.f.11.

Logwood, ch.32.f.19.

Loyerers, ch.22 ch 15.f.4.

Libeller, ch.17.f.4.

License, *see Testimoniall,* to Ale sellers, ch.18.f.1. to La-
bourers, ch.32.f.13. to Travellers, *ib.*

Lords day, ch.5.

M

Maltsters, ch.25.f.2. ch.32.f.20.

Masse, ch.8.

Millards, ch.27.f.1.

Ministers ; Disturbers of Ministers preaching, ch.7.f.2.
ch.25.f.2.

Mittimus, ch.36. ch.10.f.6.

Murder, ch.17.f.4.

Name,

The Table.

N

Name: *ill Name*, ch.17. f.4.

Night-walkers, ch.13. *how punished*, ch.13. Ch.17. f.4. ch. 25. f.2.

O

Oath, in taking the oath of one robbed, ch.32. f.26. of him that desires the peace, ch.17. f.3. of Overseers of Cloth, ch. 32. f.22. of Constables and Sheriffs, ib. of any robbed, ib. to a Recusant, ch.10. to keep the peace, ch. 32. f.22.

Officers, the making of them, ch.24. f.3. their abuse punished, ch.17. f.4. their duty and power, ch.18. f.2. ch.34. c.17. f.7.

Order of Justices, ch.19. f.10.

Overseers of the Poor, ch.20. f.1, 2, 3, 4, 5, 6, 7. ch.24. f.2. of Cloth, ch.23. f.1. of High wayes, ch.28. f.2.

P

Peace, ch.11. Surety of the Peace where grantable, and how, ch.17. ch.2. ch.11. f.1. ch.15. f.4. against fighters, ch.17. f.2. against Rioters, ch.17. f.2. common Quarrellers, and such as are breakers of the Peace, ch.17. f.2. Breach thereof, ch.17. f.11.

Peace-breaker, ch.17. f.4. c.25. f.4. how it shall be kept, c.11.

Papists, see Recusants. Priest Popish, ib.

Plague, ch.17. f.4. ch.32. f.22. Perjured persons, ch.25. f.2.

Poor, how provided for, ch.20. chargeable on whom, ch.19. f.5.

Partridges, see Hawks.

Posse Commitat. where it may be raised, and how, ch.4. f.4.

Pleading, ch.17. f.9. ch.39. (ch.15. f.4.

Preachers, see Ministers. Prison, ch.25. f.6.

Prisoner, c.26. f.2. his charges, ch.15. f.7. & 24. f.2, & 32. f.2.

Presentment, ch.28. f.1, 2. ch.38.

Procelle, ch.29. ch.19. f.10. Prophesiers, ch.25. f.2.

R

Rates, ch.28. f.25. Set a rate to have a Contribution for any of the Hundred charged with the whole execution, ch.32. f.26.

For

For
Robb
2. c.
Releas
Recogn
ch.1
Par
Ove
it, c
Recusa
Restitu
Retain
Riot, &
Robbe
Rogue
to b
f.2
Sabbat
Sakra
Sessio
ch
Serva
of
Con
wa
Searc
Settle
Sheri
Super
Supp
Subsi
Supra
Surv
Swec

The Table.

For the Poor, ch. 20. f. 6. For the Plague, ch. 26. f. 2. For a Robbery, ch. 26. f. 2. For carrying a Prisoner to Gaol, ch. 32. f. 2. c. 24. f. 2. for Bridges, ib. e. 28. f. 1, 2. for Brewers, c. 26. f. 2. Release of the Peace or good behaviour, ch. 15. f. 9, 12. Recognizance, ch. 33. how made, ch. 17. f. 8. where necessary, ch. 18. f. 3. For the Peace or good behaviour, ch. 17. f. 8. of Partridge-takers, ch. 32. f. 23. of Ale-sellers, ch. 25. f. 2. of Overseers of Cloth and Clothiers, ch. 25. f. 1. Discharge of it, ch. 17. f. 10. Recusant, ch. 9. Restitution where grantable, ch. 14. f. 5. Retaining, see Servants. Riot, Rout, unlawfull assembly, ch. 14. f. 4. ch. 32. Robber, ch. 17. f. 4. Rogue, who, ch. 20. how to scour the County of them, ch. 1. how to be used, ch. 20. f. 12. ch. 22. ch. 20. f. 5. & 25. f. 2. ch. 32. f. 22.

S

Sabbath, see Lords Day. Sacraments, their depraver, ch. 8. Sessions, what cannot be done out of it, ch. 4. f. 7. ch. 10. f. 11. ch. 24. f. 2. ch. 32. 23, 26. Servants, Masters, Labourers, and Apprentices, ch. 21. retaining of them, ib. f. 4, 5, 6. their demeanor, ib. f. 6. their wages, ib. Compellable to serve, ib. f. 2. their discharge and putting away, ib. f. 8, 12. their departure, ib. f. 9. Search, ch. 10. f. 1, 9. & 32. f. 24. Settlement, ch. 20. f. 6. Sheriffs, ch. 32. ch. 24. f. 6. & 14. f. 5. Superfedeas, ch. 34. ch. 14. f. 5, 6. & 18. f. 9, 10. Supplicavit, ch. 35. & 17. f. 7. Subsidy, ch. 32. f. 20. Supravisors, see Overseers. Surveyors, see Overseers. Swearing and Cursing, ch. 6.

Testimoniall

The Table.

T

Testimoniall of Labourers, ch.19. f.9. ch.32. f.13. of Servants, lb. of Travellers, see Licences.
 Thieves, Messengers for them, ch.15. f.4. discovery of them; ch.31.
 Trades, who may use them, ch.29. f.1. who must serve, ch.21. f.2.
 Transportation, ch.31.
 Travers, where and how, ch.14. f.5. & 13. f.4.
 Trespassers in robbing Orchards and Woods, ch.32. f.1.
 Tryall of Offenders, ch.48.

V

Vagrants, see Rogues.
 View, ch.14. f.5. & ch.15. f.4.

W

Wages of Justices, ch.40. of Servants, ch.20. f.6;7.
 Warrants, when and how grantable; to whom and against whom, ch.29. f.1. ch.12. f.7. ch.13. f.4. ch.17. f.7. To levy Tithes, ch.32. f.5. ch.29. f.2. against Tiplers and Ale-men, ch.16. f.2. To require men to give sureties; ch.9. f.7. against Rogues, ch.29. f.14. to the Sberiff, ch.14. f.5. against Clothiers, ch.21. f.12. ch.23. f.2. against Officers for not taking or not doing their Office, ch.24. f.2;5. against Hunters, to search, ch.24. f.6. against them that pay not Rates, ch.26. f.2. against witnesses, ch.29. f.1. to gather money to send a Prisoner to Gaol, ch.32. f.2.
 Watch, and Watch word, ch.12. how it must be kept, ch.12. f.1. the neglect punished, ch.16. f.4.
 Wax, ch.32. f.18.
 Weights and Measures, ch.27.
 Wine, ch.32. f.9.
 Women, ch.8. ch.16. f.1. ch.11. f.2.

F I N I S.

The Second Part of
THE OFFICE
OF THE
Countrey Justice of Peace.
Wherein is plainly set down
Their P O W E R and D U T Y
IN THE
S E S S I O N S.

The fourth Edition corrected and enlarged.
BY
William Sheppard Esquire.

Psal.82-1.

*God standeth in the congregation of the mighty, he judgeth
among the gods.*

Prov.21.3.

*To do Justice and Judgement, is more acceptable to the
Lord than Sacrifice.*

L O N D O N,
Printed for W. Lee, D. Pakeman, and
G. Bedell. 1661.

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The Second Part of the Office of the Countrey Justice of Peace.

CHAP. I.

Of the Sessions.



THE Sessions is a Court Sessions
where the Justices of the what.
Peace do sit for the exe-
cution of their Office.

There are two kindes How many
kindes.
General:
of Sessions; the General
or Quarter Sessions; is
that Court or Sitting

wherein all the Justices of the peace do sit
together for the general execution of their
authority and commission over all their li-
mits; these are called quarter Sessions, be-
cause they are kept quarterly, four times in
the year; they are also called open Sessions,
because they are kept in an open place;
and principal Sessions, because herein the
authority of the Justice of Peace doth prin-
cipally appear. The Special or privy Sessi-
ons then kept for an Hundred or Wapen-
take, is a sitting procured upon some

Special.

Riot.

Servants.

Goal-delivery.

Quorum.

special occasion, not for the general service of the commission; and commonly in a private way or place, for the more speedy execution of Justice, in some special cases; as for the inquiry of Riot, or forcible entry, placing of servants, or the like. It is called also a Statute Sessions, being enjoined by certain Statutes, that they should meet at certain times in every Hundred, and that the Constables of the Hundred do come thither, and that Masters and Servants do appear for the deciding of Differences between them, and the bestowing of people that are fit to serve and refuse, or cannot get Masters in service. And these are of special use to deliver Goals of unruly servants, petty thieves and others which get no good by lying there. But it is held if there be one Justice of the *Quorum* present, they may hear and determine any article within the commission of the Peace at this Sessions as well as at the Quarter Sessions, and accordingly they may give in charge what shall seem good to them; So also upon Statutes that give them a general power of enquiry without restraint to the Sessions, as that Statute of 25 of *H.8.* 13. of Sheep, and upon all Statutes that do use the word Sessions indifferently, without adding general or special, as 5 *Ed.6.* c.4. of fighting in a Churchyard or Church, 14 *H.8.* c.11. 19 *H.7.* c.11. of hunting, 5 *El.* c.13. of linen cloth, 2 & 3 *Ph. & M.* c.7. of Fairs and Markets and others. But not of other Statutes whose enquiry is to be at the Quarter Sessions, 14 *H.7.*

B. 37 H. 8. c. 7. 14 H. 7. 8. 14 H. 6. c. 4. 5 Eliz. c. 4. Lam. c. 19. 20. It seems therefore to be a more apt division, thus; The Sessions is either open or private: The open is either general as Quarter Sessions; or special, as other Sessions at other times. The private, is that which is done in a private way, for some particular service. Or thus, Sessions is either General, for all the work of Justices of Peace in general; Special, *i.* for some especial services; or particular, *i.* for some particular work.

The general Sessions of the Peace must be held four times a year at least (more if need be) at the times it is usually held once in every quarter (to wit)

General Sessions the times

In the first week after	{	St. Michael.
		The Epiphany.
		The close of Easter.
		The translation of St. Thomas the Martyr, being the seventh of July.

It is Dalton's opinion that the weeks wherein the Feasts happen, must be first ended before the Sessions can begin. But herein it is safest to follow the custome of the place, Dal. Just. of Peace. 16. And thus it must be holden through the Realm. And it cannot well be kept at any other time; the Justices were bound by their Oaths to keep at this time; but this clause is now omitted, it may be continued, one, two, or three days, or more, as there is occasion of business to dispatch; for the time of keeping the Sessions for Labourers, it may be twice a year, be-

tween Michaelmas and Christs Nativity, and between the Annunciation of the Virgin Mary, and the Nativity of Saint John Baptist. But any other special Sessions may be holden at any time when please the Justices to appoint. 33 H.8. 12 R.2.10. c.10. 37 H.8.c.7. 2 H.5.c.4. Lamb. 597.623. 36 Ed.3.c.12. 14 H.6.c.4.3. If the Sessions be held at any other time, it seems their acts are good, and the Justices onely punishable; for the Statutes are not in the negative (and not at any other time) it ought not to be done, but done is of force.

The place. It seems it may be kept in any place of the County; the most apt place is the most eminent place of the County, the principal and chief Towns, and where it hath been used to be held; See the Statute of 14 H.6. chap.3.

CHAP. II.

Of the Judges there which be Justices of Peace.

The Judges in these Courts.

THE Judges in the general or quarter Sessions, and in the special or particular Sessions are the same, being the Justices of the Peace of the County, who are appointed by the Commission to attend the peace of their County. And amongst these some are for special respects made of the *Quorum*, because some business of importance may not be done without the presence, or assent of

of them, or one of them. They are so called because the Commission is thus, Of which *ABC* we will to be one. And the most eminent man amongst these is commonly the *Custos Rotulorum* that keepeth all the Records. These are all of them Judges of Record, and have a judicial power, and therefore cannot depute any under them to execute their Office. And the Acts done before them are Records, against the truth ^{Records,} whereof no Averment lieth. For in some cases it is of greater credit than any Presentment by Grand Jury, and it is not traversable. This Record, sitting the Court, is in the breast of the Judge, and amendable; but after it is entred in the Rols, it is not to be altered. And hence it is that a *Superse-* ^{Superse-} *deas* of the peace made by one Justice of ^{deas.} Peace under his Seal, brought into the Court, is a sufficient Record, to prove that there is a Recognizance of the Peace taken ^{Recogni-} by the same Justice of Peace, and warrant ^{zance.} enough to call the party bound thereupon, and if he make default to record it. *Lamb. 11. Book ch. 13.*

The general Sessions cannot be kept with less than two Justices of the Peace, and one of these must be of the *Quorum*. And in cases where more than two are necessary, to do any thing out of Sessions, there it cannot be done by fewer in the Sessions. And al- ^{Justices.} beit one may do many things out of Sessions, yet the same thing, if it be done as an act of the Court, may not be done at the quarter Sessions with fewer than two Ju-

stices of the Peace, and one of them of the *Quorum*. But the special or particular Sessions may be kept by one or more Justices of the peace, according to the nature of the work there done; for as to the execution of all their power given them by their Commission, and all such Acts of Parliament as require two Justices of Peace, *Quorum unum*, there they must have two such Justices. But where power is given to two other Justices of Peace, as to send to the House of Correction such as will not work, or the like: or to one Justice of peace, as in a forcible entry, or the like; there the Sessions may be kept by such Justices of Peace, and is good for these Acts. And in these Courts their power is joynt, yet so, that if one alone see a Riot, he alone may record it, and imprison the party. *Fitz. Justice of Peace* 8.

CHAP. III.

Of the Power of the Justices of Peace in the Quarter Sessions.

The power and duty of the Just. of P. in the quart. Sess. and what may be done there. *Peace.*

All the power of the Justices of Peace, is derived unto them two ways. 1. By the Commission of the Peace. 2. By divers Acts of Parliament. By both which they have a power or jurisdiction, and a power of Correction, and all the power which the ancient Conser. atours of the Peace had, and much more. They are to labour

labour to keep the Peace, withhold men from, and suppress injurious force and violence against mens persons, goods or possessions, restrain offenders, rioters, and all other Barreters. And for their duty in the Quarter Sessions, in general this is to be known, That all that they may do out of the Sessions, or at any other Sessions, they may do at this Sessions, and much more, for every Quarter Sessions is a Sessions, though every other Sessions be not a Quarter Sessions. See therefore *Infra*, what may be done by special Sessions, or out of Sessions. Herein they may and must endeavour to keep the Peace and all the Ordinances and Statutes made for the conservation thereof, and for the quiet government of the people, hear and determine at the Kings suit, all trespasses against the peace, and many felonies, and inflict punishment according to law, pursue, take, arrest, and chastise offenders, Rioters and all other Barreters, according to their offence, the laws, and their own discretion; take sureties of the Peace of them that break the Peace, and good behaviour of them that be not of good fame, or that they suspect. So they may and must see the Statutes for Hue and Cry after felons, against murderers, robbers, felons, night-walkers, affrayers, those that wear armour *in terrorem*, that make Riots, forcible entries, Robberies, that are come from beyond Sea, and wander about, and live idly here, and all the Statutes against force and violence, against the peace, put in execution,

Peace.
breakers.
Rioters.
Felons.

Surety of
the Peace
or good
behaviour.

tion. And in cases where they do suspect, they may arrest, examine, and if they see cause imprison. See *Commission of the Peace*, 18 Ed. 2. stat. 2. ch. 2. 1 Ed. 3. 15. 34 Ed. 3. 1. 4 H. 7. 12. 33 H. 8. 10. 37 H. 8. 7. More particularly.

Treason.

First, They may enquire and take Indictments of all Treason, and misprision of Treason, but cannot proceed to hear and determine them.

Felonies.

Secondly, They may in this Court hear and determine all felonies by the common law; and some think that the Justices in this Court may determine any felony, great or small, and deliver the Goal of all felons. But this is much doubted by others, and held that they cannot deliver suspected persons by Proclamation. For if an Indictment be against a man for any thing above petit Larceny, and the Grand Jury finde an *Ignoramus* upon it, the Sessions cannot deliver him. Resolved by the Judges temp. Car. Reg. 2. but they must binde him over to the Assizes there to be acquitted, Fitz J. P. 14. The most common practise therefore is, that all the prisoners that are in question for any felony above petit Larceny, are referred to the Goal-delivery; for albeit it be out of question, that for such felonies as are so by the common Law, and by any Statute the Justices of Peace in this Court have power to hear and determine, as such as are turned over by Sheriffs out of their turn; and others, that in strictness they may hear and determine it, yet this is not usual, 1 Ed. 4. 2.

And the reason is, because they have no Commission of Goal-delivery.

But

But there are some felonies, as upon 3 H.7. 18. 33 Hen.6.1. And 8 Hen.6.12. for imbeſſing, Record, and 5 Eliz.4. for forging of Deeds, that they have not to do with in this Court. So where one is ſmitten, or takes goods in one County and dies, or carries the goods into another County, or is indicted as an Accessary to a Principal in another County, in these cases, & ſuch like, as where there is an Indictment taken before any other, they cannot hear and determine these felonies, for they are Juſtices onely of this County, and can try Indictments onely taken before themſelves. And if Indictments be taken before them of ſuch things as whereof they have not conſuſance, they are void. *Dalt. Juſt. P. 63.*

Thirdly. They may hear and determine Treaſpaaſes all Treaſpaaſes againſt the publick peace.

Fourthly, they may inquire by Jury of all offences againſt the common, or ſtatute law, belonging to their conſuſance.

Fifthly, They may take view of all Preſentments and Indictments, made or found by the Jury.

Sixthly, They may grant out proceſſes againſt the offenders, to cauſe them to come in to answer. Proceſſes, in particular. Proceſſes in all.

Seventhly, They may take and try ſuch offenders upon any former or preſent Indictment or Preſentment, before themſelves, or any other Juſtices of Peace there after the offenders do appear.

Eighthly, They may upon conviction give judgement of Fine, Amercement, or other.

otherwise, as the cause deserves, and inflict punishment, and see execution done according to the laws. And all this they may do in their other Sessions.

Ninthly, and they may in this Court also hear and determine all offences, which by any Statute law are referred to their determination. And here it is to be observed, that many Statutes give the Justices of Peace power to do some things in their Quarter Sessions, w^{ch} they do not give them power to do in their special or private Sessions. For when a Statute gives them power to hear and determine, and doth not say where, nor how, or gives them power to do it in their Sessions, and saith not what Sessions, there it may be done at any Sessions. But where a Statute gives power to the Quarter Sessions, as 32 A.8.13 about horses, 43 Eliz.3. about poor, 5 & 6 Ed.6.25. about the inquiry of the breach of a Recognizance, 4 Jac.5. about drunkenness, 5 & 6 Ed.6. 21 Jac.22. about ingrossing, 1 Ed.6.1. about sending a Writ to the Bishop, and many others. Or to the general Quarter Sessions, as 5 Eliz.9. about Perjury, 4 Jac.5. about drunkenness; or to the general Sessions, as 2 & 3 Phil & Mar.3. about kine and calves, 4 H.8.7. about Searchers of Pewter, 33 H.8.1. about cheating by false Tokens, &c. 1 Jac.6. about rating wages, 39 Eliz.17. about Souldiers, 39 Eliz. 11. about Log-wood, 4 H.7. about Pewter and Brass. See 22 H.8.5. about repairing of Bridges, in these cases the private Sessions cannot meddle with it. So it also seems where

Quarter-
Sessions.

About
Horses.
Poor.
Recogni-
zance.
Drunken-
ness.
Ingrossing
Writ.
Perjury.
Drunken-
ness.
Kine.
Searchers
of Pewter.
False To-
kens.
Wages.
Souldiers.
Logwood.
Pewter &
Brass.
Bridges.

It is ordinary Sessions, as 4 Jac. 5. about drunkenness. But for the opening of these things more fully, these things are to be known, That the Justices of the Peace in the Quarter Sessions are enabled to do many things by divers Acts of Parliament which must be pursued, as in these particulars following.

Drunkenness.

See after Chap. 5.

1. They may in this Court inquire of all the offences against the Statute of 5 Eliz. 1. about the maintaining of the Authority of the Pope, and then they must certify the Presentment taken before them into the Kings Bench within forty days, if it be Term time, or the first day of the next Term, *Sub pena* one hundred pound, and this cannot be in another Sessions.

About Recusants & Papists maintaining the authority of the Pope.

2. They may hear and determine all offences, except Treason, and misprision of Treason, against 2; Eliz. for retaining the Subjects in their due obedience.

3. Four of the Judges of this Court, in Warrant the Court may give warrant to take away to take away arms. from the Recusant all his Armour, Gunpowder and Munition, other than necessary Weapons for their defence, and to place and maintain them else at their charge. And if they refuse to deliver them, or oppose it, they forfeit them, and may be imprisoned three moneths without Bail by the Judges from this Court, 3 Jac. 5. 6. Give the Forfeiture due from a Popish Recusant to him that sueth for it in this Court, 3 Jac. 4.

Commitment.

4. If a person indited be convinced or confess the Fault, they cannot mitigate the Fine

Mitigation of a Fine.

Fine set by a Statute; But if he protest his Innocency, before conviction, and *quia non voluit placitare cum Domino Rege*, and put himself upon the grace of the Court, they may put a less Fine, and stay the Prosecution. *Refo. Judges 1633.*

5. They have herein also divers powers given them by some Statute Laws, which are after set down.

C H A P. IV.

Of their power in particular in Quarter Sessions.

About
Transportation of
Corn.

They may by Order at this Sessions, if they see cause, forbid the Transportation of Corn beyond Seas, after the Justices of Assize, and others having authority to do it have first permitted it. 13 *Eliz.* 13. which they cannot do in the private Sessions.

About the
division of
a wood.

Orders.

They may at this Sessions, and not at a private Sessions, upon a motion, make an Order to two of the Justices of the Peace, not being of kin, alliance, council, or free to either party, to set out a fourth part of the Soil, wherein another hath Wood which he intends to cut down; the same being to be set out before the Wood is to be cut, 35 *H.8.* 17. 13 *Eliz.* 25.

About
oversight
of the
Sheriffs
Books.

At this Sessions held next after *Michaelmas* the *Custos Rotulorum*, or two of the eldest Justices of the *Quorum* must appoint the two that are to oversee and controll the Sheriffs

Sheriffs and his under Officers Books of Amercements, and this cannot be done at any other Sessions of the Justices of Peace, 11 H. 7. 15.

At the quarter Sessions after *Easter* the Justices of Peace are to set down the prices of all Vessels of Ale, Sope and Beer that shall be made and sold out of all Cities and Corporate Towns, 23 H. 8. 4. 8 Eliz. 9. *Dalt. Just. P. fol. 184.* which cannot be done at their special Sessions.

About the Assesment of the prices of vessels.

In this Court, and not at any special Session, the Justices of Peace may punish by Fine of twenty pound, and pillory the deceitful users of Logwood, upon 39 Eliz. 11. And he is to be set in the Pillory, in the Market Town, where the offence was done; or if it be out of a Market Town, then in the next Market Town, there to be all Market time, once or more days as the Justices think fit.

About users of Logwood. Fine. Pillory.

In this Court and not in any other Sessions, they may and must restrain, suppress or discharge the superfluous number of Maltsters in part, or in all by 39 Eliz. 16. And also restrain such as they think fit to be restrained from buying of Barley to convert into Malt in part or in all, for such time as they shall think fit, which if they obey nor, any two Justices of Peace may punish out of Sessions.

About converting Barley into Malt. Order.

Here and not in the other Sessions they may for a time forbid them that buy Butter and Cheese within their Countrey under pain of the double value of the things, upon

About buying and selling of Butter and Cheese.

About Re-
grators,
Forestal-
lers, &c.

upon 3 & 4 Ed. 6. 21. 21 Jac. 22.

Forestallers, Regrators, Ingrossers, Badgers, and Drovers are to be punished, hereupon 5 & 6 Ed. 6. 14. and 5 Eliz. 12. and this cannot be in the special Sessions. See fol.

About
Cloth.

The distribution about the penalties for want of weight, length, and measure of Cloth, two parts to the poor, and one part to the overseers and searchers, if it must be at any Sessions, must be at the quarter Sessions by 21 Jac. 18. *Sed quare bien*. For much may be said to prove that it may be done out of Sessions.

About
making
and order-
ing of Of-
ficers,
Searchers
of Pew-
ter.
Treasu-
rers of the
County
stock.

Two Searchers of Pewter and Brass upon 4 H. 8. 7. must be made by the Justices at this Sessions next after *Michaelmas*, and they may not be made at any other Sessions.

Treasurers of the County stock for relief of the poor maimed Souldiers and Mariners, are to chosen at this quarter Sessions next after *Easter*, and not elsewhere, of sufficient men, for one year, by 43 Eliz. 3. So also the Treasurers for the relief of the Prisoners in the Kings Bench and Marshalsea are to be chosen at the same quarter Sessions, and not elsewhere, of able men, for one year, upon 43 Eliz. 3.

Collector
of the
money for
the Goal.

The Collector, for the Money for the relief of the Prisoners in the common Goal, is to be chosen by the Justices in this Court, and not elsewhere, and may be longer than a year in his Office. 14 Eliz. 5.

Common
Informers.

If any common Informer following his Suit by Deputy and not in person, or by his At-

Attorney, or if he compound with the offender before answer, or after, without licence of the Court, he must be punished in this Court, and it cannot be at a private Sessions, 18 *Eliz.* 5.

So if any Clerk that receives the Information, do not set down the Day, Moneth, and Year of exhibiting it, or not indorse upon the Process the Informers Name, and the Statute upon which he goes, 18 *Eliz.* 15. or make out Process before this be done, the penalty of forty shillings is to be imposed here; and if the Informer have his hand in this, or take reward without licence of one of the Courts at *Westminster*, or compound without licence, he is to be put in the Pillory two hours in a Market Town, made to pay ten pound Fine, and put out of his Office by this Court, and not any other Sessions. Clerks of Courts.
Pillory.
Fine.

The Officers which are made at this Court, and cannot be made by any other Sessions, may not properly be punished for their faults elsewhere, but are to be punished at this Sessions: But for other Officers that are makeable at either of the Sessions, or are equally attendant to both, they may be punished at either of the Sessions. Officers.

The Master of the House of Correction is to be made by the Justices of Peace at their quarter Sessions, and not elsewhere; and he is to continue for no longer than one year, 30 *Eliz.* 4. 7. *Jac.* 4. Master of Bridewell.

As touching that which concerns the Justices of Peace, these things are to be known.

S

1. That

House of
Correc-
tion.

1. That they may at this quarter Sessions, and at no other Sessions, take order, by building a new, or converting an old House, to prepare and erect one or more Houses of Correction in what place of the Country they shall think fit.

Licence.

2. They may there cause them to be assured on whom they please in trust for this use. And this may be done without any Licence from the King, and may be incorporated also if they please.

Orders.

3. They may also take order here to provide a stock of money and other necessaries, as a backside Mill, Turn Cards, to set Rogues and others to work; for these Houses are to be Houses of Work for the orderly, as well as places of Punishment for the disorderly.

Rogues.

4. They may here set down Orders from time to time for the government and ordering of the house-stock and persons in it, appoint and give allowance to Governours.

5. They may here take order for the sending thither and punishing of Rogues and other idle and disorderly persons, who are not to charge the Countrey, but to live there by their labour.

6. At this Court they may punish or remove the Gouverneur, according to their discretion, for his neglect of his duty, 32 Eliz. 3 4. 7 Jac 4.

Hi h-
ways.
Presen-
ment.

They are to certifie to the next quarter Sessions, and not elsewhere, all the Presentments of any Supervisors of High-ways brought in to them, 5 Eliz. 13. 18 Eliz. 9.

And

And this cannot be at other Sessions. And Fine.
here the offenders are to be fined.

He that is bound by Recognizance for About
the good behaviour for seven years for un- Recogni-
lawful hunting, breaking of the head of aances.
Fish ponds, or the like, upon his acknow- Discharge,
ledging of his offence, and giving satisfaction And suing
to the party wronged, in this quarter Sessi- of it.
ons, may then and there be discharged.
And after this Sessions, he may be dischar-
ged at other Sessions. And if the offender
at any open Sessions confess his fault, and
give satisfaction to the party grieved, he may
release him within the seven years, 3 Jac.
13. 5 Elix. 21.

If a man be bound to the Peace during Concern-
life, or generally without any time or day ing dis-
limited, it seems that neither the King, the charging a
Justice of Peace, nor the party can dis- Recogni-
charge this Recognizance during life of zance once
the party bound, by Release or other- taken.
wise. *Br. R. 17 121 E. 4. 40. Lamb, 103.*

If a Justice of Peace upon his own discre-
tion shall compell one to find Sureties for
the Peace until a certain day, he may also at
his own discretion release the same before
the day, if it be not forfeited before; and
such Release shall discharge the party so
bound from his Appearance.

If a Justice grant the Peace at request of
another, and Recognizance be to keep the
Peace against A. onely, then before the next
Sessions may A. onely release, and none
other; and that Release being cer tied will
discharge the party of his Appearance.

If the same Recognizance were to keep the Peace *versus eundem populum* & *præcipue versus T.* yet may A. release it: But though the Surety of Peace be released, yet the Recognizance shall not be cancelled, left forfeited before that Release made, but shall be certified with the Release to the next quarter Sessions.

Release of
Surety of
Peace.

Ad quem diem hic venit prædictus A. quem pl. C. in propriis personis suis, & super hoc prædictus A. gratis remittit & relaxat securitatem pacis per ipsam versus prædictum & superius petitam J. prædictus C. eas inde quietus.

Surety of
Peace dis-
charged.

Ad quem diem Luna venit. pl. T. M. in propria personis suis, & super hoc viso, lecto & audito recorde pl. & per cur. hic plen. in illeto reus est qd. pl. T. M. de aliqua securitate pacis occasione præmissa ulterius inveniendi exin. &c. & quod idem T. eat in de sine die.

Certifying
a Reco-
gnizance.

Virrute istius brevis mibi directi. ego J. R. unus Justic. &c. tenorem securitatis unde inde fit mentio. Domino Regi in Cap. sua sub sigillo meo distincte & aperte mitto prout patet in schedul. huius libr. annexat. M. &c.

Condition
of good
abearing.

Conditio istius Recogn. est, quod si pl. A. impofterum se bene gerat & pacem Domini Regis conservet erga pl. C. servientes suos familiares, & nullum dampnum corporale, nec aliquod quod in passione pacis Domini Regis cedere valeat, eis nec alie. eorum faceret quoquo modo, extunc recogn. prædicta pro nullo teneatur & alioquin in suo robore perseveret, &c.

Atchouse-
keepers.

The Justices of Peace may in this Court by Presentment, Information, or otherwise,

wise, as they think fit, inquire whether Ale-house-keepers have done any act to forfeit their Recognizance; and if they have, send for them in by Process to shew why it should not be levied, and hear, and determine the same according to their discretion, 5 & 6 Ed.6.25.

The Fine is to be set on him that hunteth disguised by night, and confesseth it upon examination, must be set at the Sessions, by 1 H.7.7. and cannot be set at the other Sessions of the Peace.

About him that hunteth by night, &c.
Fine.

The rating of Wages for Labourers and Servants must be at the quarter Sessions after Easter, or within six weeks after, and cannot be at any other time, or in any other place, 5 Eliz.4. 1 Jac.6. 39 Eliz.22. 1 Jac.25. And at this Sessions they must examine how it is observed. Yet see 13 R.2.8.

About making rates, or rectifying of them.

In their quarter Sessions after Easter, and in no other place, nor at any other time, they may and must for the relief of the Prisoners in the Kings Bench and Marshalsey, rate all the Parishes of the County weekly, as they think fit, so as no Parish be under a half penny, and at or above six pence, and all the County together but at two pence a Parish weekly, and appoint Treasurers to receive it, and at the years end appoint new Treasurers, and call the old to account, and appoint how the surpluse of money shall be disposed. And these sums are to be rated upon the Parishes by Constables or Churchwardens, or in their default, by one Justice of Peace, 43 Eliz.3. See.

For prisoners in the Kings Bench or Marshalsey.

And the Justices are here to set down how much shall be sent quarterly to the Kings Bench and Marshalsey, but it must not be less than twenty shillings a year to each of them. This money is to be levied and paid to the High Constables, who are to pay it at every quarter Sessions to the Treasurers.

For pri-
soners in
the com-
mon Goal.

They may here rate every Parish in the Shire for the relief of the Prisoners in the common Goal, as they think fit, so as they exceed not six pence or eight pence a week upon a Parish. And this being levied by the Churchwardens, and paid over to the High Constables or head-Officers of the place, they are to pay the same at this Sessions, to such as the Justices in this Sessions shall appoint to be there ready to receive it, 1 Jac. 25. 14 Eliz. 5. And this cannot be done at the other Sessions.

For main-
ed Soul-
diers, &c.

They may and must at the quarters Sessions after Easter, and not elsewhere, or otherwise, rate the whole County, for the relief of maimed Souldiers and Mariners; no Parish above ten pence, nor under two pence weekly; and if there be above fifty Parishes in the County, the whole rate must not exceed six pence a Parish, 43 Eliz. 3. And these Moneys the Churchwardens and Constables of every Parish must collect and pay to the High Constables ten days before quarter Sessions, and the High Constable to the Treasurers at the Sessions, 43 Eliz. 3.

For the
poor.

If a Parish or Hundred be not able to relieve their poor, the Justices at this Sessions, not

not at a petty Sessions, may rate any place within the County to be contributory, 43 *Eliz.* 2. And if the poor have parents, or grand parents, children, or grand children, that are able to relieve them, the Justices may at this Sessions compell them to contribute towards their relief, 43 *Eliz.* 2.

If any be grieved by a rate made for the poor, or in any the cases before, he must be relieved here, and cannot be relieved elsewhere, 43 *Eliz.* 2. 14 *Eliz.* 5. 18 *Eliz.* 3.

An over-rate.

The taxes made by two Justices of Peace in the countrey for the releff of them that are sick of the Plague, being sent into this Sessions (as they must be) may be there continued, enlarged, or extended to any other part of the County, as the Justices shall see cause, 1 *Jac.* 3.

For them that have the Plague

The Assignment and Revocation of Pen-sions, for Souldiers maimed, old and new, and of the Widows and Orphans of Souldiers slain in the late Wars, and Mariners, must be by the Justices at this Sessions, and cannot be at any other Sessions, and here they may set down or alter as they see good. And here they may fine the Treasurer if he refuse to pay it, 1 *Jac.* 25. 43 *Eliz.* 3.

About assign-ment of Pen-sions.

The Justices may here dispose of the surplus of the County stock to charitable uses, according to the Statutes for the relief of the poor, and punishment of Rogues, 43 *Eliz.* 3.

About disposal of the surplusage of stock in the Treasurers hands.

The ordering of matters of the poor, if anything be amis done by the Overseers and Churchwardens, must be at this Session.

About the ordering of the poor or Rogues settle-ment.

Binde
poor Ap-
prentices.
Rogues.

ons. And therefore the removing and let-
tling of the poor, unless they be Rogues,
is to be done by order of this Sessions. And
here they may as they do out of Sessions (if
they will) binde the poor children Appren-
tices, 43 *Eliz.* 2. But it seems the questions
about Rogues may be determined at any
Sessions, upon 39 *Eliz. Dalt. J. P.* 120. xcept
dangerous Rogues, who are to be punished
at this Sessions by a Brand, with a hot Iron,
&c. 39 *Eliz.* 4. 7 *Jac.* 4. But for the point
of setting, see in the other point of the Ju-
stice of Peace office in Chap. 18.

About set-
ting up of
a Cottage.
Poor.

It must be by order of this Sessions, that
the Churchwardens and Overseers of the
poor, with consent of the Lord of the Man-
nour, may set up a Cottage on the waste
ground there, 39 *Eliz.* 3. 43 *Eliz.* 2. and it
cannot be done elsewhere.

About
granting
Licences
for Wine.

They may at this Sessions licence the sel-
ling of Wine, in Towns that are not Cor-
porate, and otherwise none may sell but by
special grant from the King, 7 *Ed.* 6. 5. And
this cannot be at another Sessions.

For shoot-
ing.
i

A licence to him that keepeth Hawks, to
shoot hail-shot in a birding-piece or hand-
gun, at Crow, Pie, Chough, Rook, Ring-
dove, or lesser bird for Hawks meat onely,
must be had at this Sessions, 1 *Jac.* 27. not
elsewhere.

For dro-
vers, &c.

Drovers of Cattel, Badgers, Laders, Kid-
ders, Carriers, Buyers and Transporters of
Corn, Grain, Butter and Cheese, must be li-
cenced at the quarter sessions, and cannot
be licenced elsewhere. And here it must be
under

under the hands and seals of three Justices of Peace, *Quorum unum*, near the place where the party hath dwelt three years before; nor may they so license retainers or household-servants, but householders, married men, and of thirty years old; nor may they give to them a licence for longer time than one year from the date of it, which must be at the Sessions; otherwise they are void. 3 Ed. 6. 14. 5 Eliz. 12. 13 Eliz. 13.

They may here, if there be four, *Quorum unum*, present, hear and determine all Nuisances in Bridges in the high-ways, and of the high ways 300 foot at the end of the Bridge, to the damage of the people, and make out such Process and pains upon Presentments, for the speedy amending thereof against them that ought to be charged, as the Judges of the Kings Bench use to do, or as they shall think fit to do, 22 H. 8. 5. For the better understanding whereof, these things are to be laid down:

1. If the whole Bridge be decayed, it must be made again, &c. Cook 2. par. Inst. 701.

2. This Statute extendeth not to private Bridges, to Mills, or the like, but onely to common Bridges in the Kings high-ways, where every one hath or may have passage; and the Indictment must be, that the publick and common Bridge being in the common high-way, upon the River or course of water, &c. Cook 2. par. Inst. 701.

3. This is to be understood of every Shire where be four Justices of Peace, *Quorum unum*,

About repairing of Bridges and Highways adjacent.

now, and of every Franchise, City, or Borough where there be four Justices of Peace, *Quorum unus*, and where they keep a general Sessions of the Peace for such Franchise, City, or Borough. But for want thereof the Justices of the Peace of the County shall inquire. But if any such place be a County, and have not such Justices, no other Justices can do this, but it must be reformed according to the Common Law.

4. The first branch extendeth onely to such cases as where there is some body in certain known to be charged with the reparation.

5. Where it is not known what person or place ought to repair, the Bridges without the limits of Cities and Towns Corporate, shall be repaired by the Inhabitants of the County, and such as are within their limits; and if the Bridge be part within the one side, and part within the other side, each party must repair that which is within their own limits *Idem Stat. 21 H 8.5.* For clearing of which branch know this:

First, that the persons charged by the word Inhabitants, are,

Inhabitants.

1. Corporations and Bodies politick, and other persons resident in the place, or having lands there, *Qua in propriis manibus & Sumptibus possident & habent*, though they dwell and be elsewhere.

2. An infant that hath house or land by descent or purchase, and the husband of a *Feme Covert*.

3. A man that onely dwelleth, and hath a personal

personal residence there, but no Estate is chargeable, for it must be such an Inhabitant as is distrainable. *Cook idem.*

Secondly, if it cannot be known by any proof, who ought to repair it, the grand Jury are to find the decay, and to conclude, and further the Jurors foresaid present, that it is altogether unknown, what persons, what lands or tenements, or bodies politic, the same Bridge, or any part thereof, of right, or ancient custom ought to repair, or have used; and upon this, four Justices of Peace are to proceed to assess the County.

The Justices may here rate other Parishes not charged so much to the repair of the high-ways as 12d a pound in the year, to contribute to the help of a Parish, that by that Rate cannot repair their high ways.

Rate for the high-ways.

The Justices may here hear and determine all matters concerning any charitable gift to any high-ways, cawseyways or bridges, and make orders therein as Commissioners of charitable uses may do; and further they may order damages, and set a Fine not exceeding 40l. upon the faulty, and cause this money to be employed to the repair of the high-way.

Money given to repair the high-ways

The Justices must here confirm by-laws made in Parishes for the reforming of their Nuisances.

By-laws.

The Justices may here if they please, and for good reason, appoint a Cottage to be built, or one that is built to be continued as long as they please. *Stat. 31 Eliz. ch. 11.*

Continuance of a cottage

CHAP.

Of their Power in their Special Sessions.

The power and duty of the Justices of the Peace in the special Sessions, and what may be done there.

THis special Sessions is of special use for the ridding of the Goal, and other purposes; And the Justices of Peace herein may take as much or as little business upon them as they please, and are not bound to take upon them all the Service of the Commission as they are at the quarter Sessions. And they have here (except in some special cases before noted) the same power as they have at the quarter Sessions. But note, the special Sessions may not be held for the County.

For first, all that a Justice of Peace may do out of Sessions, he may much more do here in this Sessions, as punish Ale-sellers on 5 & 6 Ed. 6. 21. Rogues upon 39 Eliz. 4. and the like. See 1 Jac. 6.

2. In this Court they may hear and determine upon all the Articles within the Commission of the Peace, and that are offences at the Common Law. Lamb. fol. 624. as Felonies, Trespasses, &c. See before Dalt. 7. P. 317.

3. In this Court the Judges have power of Oyer and Terminer, of all offences which any Act of Parliament doth give them power in general, of inquiring, punishing or hearing, and determination, or determination only without directions to any Sessions. Of this sort are the offences against the

of their Power in their Spec. Sessions. 375

The Statutes of 25 H.8.13. about Sheep, 2 H. Sheep.
6.14. about Gold-Smiths, 8 Hen.5.3. about Gold-
Gilding, 17 Ed.4.4. about Tyle, 13 R.2.1. Smiths.
about Victuallers, 21 H.6.19. about Soul- Tyle.
diers, 23 Eliz.10. about killing of Pheasants, Victual.
&c. 8 Eliz.3. about transportation of lers.
Sheep, 1 H.8.7. about Coroners, 8 H.6.5. Souldiers.
11 H.7.4. about Weights and Measures, Pheasants.
28 H.8.14. about Wines, 42 Ed.3.9. 23 H. Transportation of
6.10. 11 H.7.15. 27 Eliz.7. about Sheriffs, Sheep.
1 & 2 Phil. & Mar.5. about transportation Coroners.
of Corn, and many others. Weights
and Mea-
sures, Wines. Sheriffs. Corn.

4. In this Court they have power also in
all cases where the Statute doth use the
word Sessions indifferently, without adding
the word General or Special, as upon the
Statute of 2 & 3 Ed.6.19. about conspiracy Conspira-
of Victuallers, 5 & 6 Ed.6.4. about fighting cy of Vi-
in a Church-yard, 5 Eliz.15. about eating ctuallers.
of flesh on fish-days, &c. 1 Jac.22. about Fighting in
Tanners, 4 Jac.4. about Brewers, 7 Ed.6.51 a Church-
about Wines, 2 & 3 Phil. & Mar.7. 31 Eliz. yard.
12. about tolling for a Horse in a Fair, &c. Fish-days.
1 Eliz.17. about taking a Fry of Fish, 19 Tanners.
H.7.11. about Hunting, 2 & 3 Ed.6.101 Brewers.
about deceitful Malt, most of the branches Wines.
of 5 Eliz.4. about Servants and Appren- Tolling for
tices, 4 & 5 Phil. & Mar. about Souldiers, a Horse.
2 Ed.6.6. 12 Ed.4.4. about Escheators, Fish.
5 Eliz.21. about Fishing and Hunting, Hunting.
1 Jac.27. 23 Eliz.10. about killing wilde Malt.
Escheators. Fishing. Hunting. Wilde Fowl, Servants.
Fowl, Appren-
tices.
Souldiers.

Hares. Fowl, Hares, Pheasants, &c. 33 Hen. 8.
 Pheasants. about unlawful Games, 33 H.8. 13. about
 Unlawful shooting in Guns, 1 Ed.4.2. about certifi-
 Games. cate of Indictments by the Sheriff, about
 Guns. care of Indictments by the Sheriff, about
 Certificate usury, 37 Hen. 8. 9. 13 Eliz. 8. *Cum multis*
 by the *aliis.*
 Sheriff.
 Usury.

5. So also it seems to be in such case
 where the Statute appoints the thing to be
 done in open Sessions, as in 5 Eliz.4. about
 Servants that assault their Masters, &c. 5 &
 Alchouses, 6 Ed.6. 25. about Ale-houses, 31 Eliz. 7.
 Cottages. about Cottages, 27 Eliz.7. about Sheriffs,
 Sheriffs. 39 Eliz. 16. about Malt, 3 Jacob. 13. a-
 Malt. bout discharge of the good behaviour.
 Discharge Where it is open quarter Sessions, if open
 of the did intend the quarter, then quarter were
 good be- idle and to no purpose. And see 21 Jac.22.
 haviour. the last cause, *Sed quare.* And see general
 quarter Sessions in 43 Eliz. 2. and many
 others.

6. In cases where a Statute gives power
 of Oyer and Terminer of any offence in gene-
 ral, this must be done at one of these Ses-
 sions as is before, and cannot be done out of
 Sessions. But where a Statute doth give a
 special power, or power to do a special
 thing, as to make a Rate or the like, and
 saith not where, there it may be done as
 well out of any Sessions, as within or at the
 Sessions. See 22 Hen.8. 9. Cook 2. part. inst.
 703,704.

7. In cases where the Statute designeth
 the power to the Justices, or appointeth the
 thing to be done in these words, at the
 quarter Sessions, or general quarter Ses-
 sions,

ons, or general Sessions, or ordinary Sessions, there the thing cannot be done at this Sessions, but must be done at the quarter Sessions. See before fol. 15. And so also it seems, if it be principal Sessions, as 4 H. 7. 12. And the Justices of Peace in this Sessions also have power in these particulars following.

8. The Hostler and Inholder that maketh not horse-bread sufficient, and of due assize according to the price of Corn, may be punished as well here as in the quarter Sessions; for the first offence by Fine; Second, Imprisonment a moneth without Bail; Third, Pillory without redemption; Fourth, to be fore-judged the keeping of an Inn, 21 Jac. 21. About making of Horse-bread.

9. He that disturbeth a Preacher, is to be bound to the good behaviour by the 1 M. 3. for one year. And this may be as well at this as at the quarter Sessions. And he that doth destroy a Fish-pond, steal Fish, &c. is to be bound for seven years. And this (it seems) is most properly to be done by 5 Eliz. 21. Dalt. Just. P. 235. in a Sessions of Peace; And that may be done as well here as in the quarter Sessions. About binding to the good behaviour. Disturb a Preacher. Destroy Fish;

10. Any question about Rogues may be determined at this Sessions upon 39 Eliz. Dalt. J. P. 120. except it be a dangerous Rogue, for he is to be punished at the quarter Sessions, 39 Eliz. 4. About Rogues.

11. In this Court also the Judges may receive the Indictments and Presentments of Felony taken before the Sheriffs in their turns. About receipt of Indictment from the Sheriff. Felony.

turns. And upon these they may proceed as upon Indictments originally brought before themselves, 1 Ed.4.2. as they may in the quarter Sessions.

About
the prices
of Ale and
Beer.

12. The Justices of Peace of the County may according to their discretion set down the Rates and Prices of every Ale-brewer and Beer-brewer of the County ;shall have and take for every Barrel, Kilderkin, and Firkin of Ale and Beer : and he that takes more, forfeits six shillings a Barrel, three shillings four pence a Kilderkin, two shillings a Firkin : And this Assesment, though perhaps *rigore juris*, it may be done out of Sessions, yet it seems more proper to be done at a Sessions. 23 H.8.4.

About
Alehouses
suppressed.
Licensed
de novo.

13. It seems Ale-houses put down by two Justices cannot be allowed again by two others, nor otherwise but in this or the quarter Sessions : And there they may be licenced *de novo*. And then they cannot be suppressed but at their Sessions again, where they were licenced, or the quarter Sessions, 5 & 6 Ed.6.25. Dalt. J. P. fol.35.

About Re-
cogni-
zances of
the Peace
of good
behavi-
our, and
discharge
thereof.

14. This Surety may be taken here as it may be by Justices out of any Sessions ; but the proper place of discharging such as are bound to the Peace or good behaviour, is in the Sessions of the Peace. And the Justices cannot well do it out of the Sessions. And this is also the proper place to get a Discharge of other Recognizances, which things may be done as well here as in the quarter Sessions.

15. In this Court the Judges may take the

the Presentment of Searchers of Tyle, of About the
defaults they finde in making of Tyle, upon taking of
17 Ed. 4. 4. as well as in the Quarter Sessions. a presentment.

17. The discharge of an Apprentice from About the
his Apprentiship may be at this Sessions by discharge
four Justices of Peace, *Quorum unus* under of an Ap-
Hand and Seal by 5 Eliz. 4. And yet by the prentice.
words of the Statute though one Justice of
Peace may allow the case of putting away
or departing of a Servant, yet the proof of
the sufficiency, or insufficiency of the cause
for which the Master may put away his Putting
Servant before the end of his Term, or at away a
the end of his Term without warning, must servant.
be at the Sessions, and therefore it seemeth
reasonable this offence should not be tried
elsewhere. And yet the punishment of him
that doth assault his Master, &c. if it re- About a
quire more than a years Imprisonment, may servant a-
be here as well as in the quarter Sessions. buling his
And almost all the offences against that Sta- Master.
tute are punishable as well here as in the
quarter Sessions, 5 Eliz. 4.

18. In this Court as in the quarter Sessi- About the
ons, they may by their discretion upon conceal-
complain and by Bill, take and charge a ment of an
second lury, whereof every one must have Inquest.
fory shillings in lands yearly to inquire of
the concealments of other Inquests taken
before them, within or without Franchises,
and before others of such offences as are
inquirable and presentable before Justices
of the Peace. And being found to be done
within a year before, they are to amer ce
T them;

About a
Witness.

them, according to their discretion, 3 H. 7. 1.
19. It seems they may here as well as at the quarter Sessions, give remedy to the party grieved against a Witness, that being served to appear in any Court of Record, and doth make default by 5 Eliz. 9. *Sed quare*. If any Court of Record do not intend the four Courts at *Westminster* onely, as usually by these words it is intended. *Cook Rep. 6. Gregory's Case, fol. 19.* This is resolved in the Case of *Green* against *Guy* in *Banc. Reg. Mich. 4. Car. 1. Cro. 104.* viz that those Courts are intended the Courts in *Westminster Hall*, because no inferiour Court can allow protection, *Essoin, &c.* *Vide postea cap. 10.*

About Fish

20. In this Court the Judges may punish the eating of Flesh on Fish-days without Licence, the not disclosing of it to an Officer, the not having of a Dish of Sea-fish with the Dish of Flesh by him that is licensed, and the offences of buying of Herring of an Alien, Transportation of things in an Aliens Boat, and the Importation of Wines from *France* in Aliens Ships against 5 Eliz. 5. as well as in the Quarter Sessions.

About a
Certificate
Recogni-
zance for-
feit.

21. If a Recognizance be forfeit by default of Appearance, or otherwise, the Justices of Peace may and must from this Court or the quarter Sessions where it is, certify the same with the cause of Forfeiture into some of the Courts at *Westminster*, that from thence Process may go out against the party, *Dalt. Just. Peace. 213.*
And

And this Court may do this also A Recognizance must be certified though it be released.

22. The Justices of Peace may here in ^{About} this Court, and in the quarter Sessions, both ^{Officers} require of all the ministerial Officers that belong to the Court, as Sheriff, Clerk of the Peace, Coroners, Constables, Bailiffs of Hundreds, that attendance and service they owe, and punish their neglect, 27 H. 3. 8. *Young* 12. 14 R. 2. 5.

And if Sheriffs or their under-Officers return Jurors without their Additions, the punishment of them may be hereupon, 27 *Eliz* 7.

23. Restitution of stolen goods to him by ^{About res-} who e industry the Felon is attainted; may ^{titution} be made by the Justices at this Sessions; as ^{of stolen} well as at the Quarter Sessions; for a Felon ^{goods.} may be attainted before them at this Sessions as well as at the other, 21 H. 8. 11. *Cook* second part of his Instit. fol. 714. And though the goods have been sold in Market overt, yet restitution shall be made; and this restitution it seems the Justices must make without inquiry of the fresh suit.

24. This Court as well as the Quarter Sessions, may (it seems) hear and determine the offences of Clothiers in not setting their Seal to their Cloth, selling or putting to sale the Cloth that shrinks to so much in wetting, by false dying of Wool or Cloth, by selling by false Measures, using Iron Cards and Pickards, pressing Cloth to be used here in this Realm, or Ireland, not ^{About} marking ^{Cloth.}

marking the Cloth with the Letter E. crowned, by 3 & 4 Ed 2. So the offences of Overseers of Cloth in not taking upon them, or in not executing their Office, *the same*.

So the deceits used in the stretching and otherwise abusing of Linnen-cloth, may be punished in this Court, or the Quarter Sessions upon 1 Eliz. 12.

About
Usury.

25. The taking of more than ten in the one Hundred, or assisting in such a Contract, upon 37 H. 8. & 13 Eliz. 8. is punishable in this as well as in the Quarter Sessions. But the taking above eight, and under ten in the hundred, or the procuring of such a Contract upon 21 Jac. 17. or the taking above six pound *per cent.* contrary to the Act made 12 Car. 2. it seems is not punishable in either of these Courts, but elsewhere.

About
keeping of
Sheep or
Farms.

26. If any persons (except spiritual persons) shall at one time, have of his own, or to his own use, to keep upon his own or others Farms, except it be upon his own Inheritance, or that which one hath in Joynture by the courtisie, or in Dower above two thousand Sheep (an hundred and twenty accounted to the hundred) besides Lambs (to be reckoned of a year old and above, from the time of the fall to *Mid-summer* following) except Sheep for the maintenance of his house, Sheep by Executorship, Marriage, or given by Will to a Child within age, he forfeits three shillings four pence a Sheep. And if any take to Farm,

or take an Estate for life, years, or at will, by Indenture, or Copy, any more than two houses, holds, and Tenements of Husbandry, whereunto any Lands are belonging in any place whatsoever, nor may any man occupy such, except he live in the Parish where they are *Sub poena* three shillings four pence a week, so long as he shall occupy it, these offences may be heard and determined in this Court as well as in the Quarter Sessions, 25 H.8.13.

27. In this Court as well as in the Quarter Sessions, the erecting and continuance of Cottages, receipt, and keeping of Inmates may be punished, 31 Eliz.7. For the better understanding of which Law these things are to be known. 1. If one convert that building that before this Statute was one house into two houses, these are two Cottages, and punishable by this Statute, for this is a continuing of Cottages. 2. If one build an old house upon a new Foundation in the same quantity that the old was, this is not punishable. 3. If one build two distinct Cottages together, the one upon the old Foundation, the other upon the new; that which is built upon the old Foundation is not punishable, but that which is built upon the new is. 4. If one build a new house upon an old and new Foundation together, so that the entire house doth stand upon both together, this is a Cottage punishable by the Statute, Trin.8. Car. 8. R.5. The building of a fair house in the Countrey by a rich man, nor having four

Alout
Cottages
and In-
mates.

Acres of Land to it, is a Cottage per Just. Jones Trin. 13 Car. in B. R. But the placing of the poor is not in this Statute, Resolved of the Judges; Temp Car. Regis. Cottages in a City, Borough, or Market-Town, or used for workmen in a Mineral, or in a Quarry of Cole, Stone, Slate, or for making of Brick, Lime, or Cole within a mile of the work, or within a mile of the Sea: for Sea-men to furnish Ships; or in a Park or Forrest for the Keeper of the game, or for a Shepherd or Herdsman to keep the Sheep or Cattel of the Town, or for a poor impotent person, or set, or kept up by order of the Quarter Sessions, or built by their order and the Lords consent are excepted: 31 Eliz. 6. Cottages and Inmates onely inquirable before Justices of Assizes, Justices of Peace, and Lords of the Leet. 2 Inst. 739.

About vi-
Quallers
and rates
of selling
commodi-
ties,

28. If any Butcher, Fishmonger, Hostler, Baker, Brewer, or the like Tradesman, sell their provision at unreasonable prices, having respect to the prices of the places, adjoining, and the place from whence the commodity is fetched, he may be fined in this Court, or in the Quarter Sessions for it to the double value, 13 R. 2. 8. 23 Ed. 3. 6. And it seems the Justices may set down Rates for the sale of commodities for provision: yet See 25 H. 8. 2.

Wine:
Assess-
ments of
prices.

The prices of Wine may be assessed by the Kings great Officer, and he that sells for more, may be punished by the forty shillings penalty here, 28 H. 8. 14. So the Justices may

may here set down the Rates of Vessels of Ale and Beer, See before, and 13 H 8 4

30. If the occupiers of Land in the Coun-
treys do not their endeavour to destroy
Choughs, Crows, and Rooks, or refuse to
pay them that take them, they may be pu-
nished here upon 24 H.8.10. About de-
stroying
of Crows,
&c.

31. The Transportation of any Corn or
Malt, Butter, Cheese, Herring, or Wood in
Shipping beyond Sea without licence, or
the carrying of such things to such Shipping
to be transported, or the exceeding of a
Licence herein, are punishable in this Court
upon 1 & 2 Phil. & Mar 3. About
Transpor-
tation.
Licence.

32. The delivery or receiving of live
Sheep in any Ship to be transported out of
the Realm, first offence Los of Goods, and
Imprisonment a year without Bail, and
Loss of his left Hand; second offence Fe-
lony, this may be here executed at this Ses-
sions, by 8 Eliz.3.

In this Court as well as in the Quarter
Sessions the malicious striking of any person
with any weapon in any Church or Church-
yard, or the drawing of any weapon in that
place, with intent so to do, may be punish-
ed with the cutting off of one Ear, and if
he have no Ear, with Burning, upon 5 & 6
Ed.6.4. About
fighting
in the
Church,
&c.

33. In some special Cases they have po-
wer here to hear Suits between party and
party; as on the Statute of 3 H.8. for le-
vying of Money for Knights of the Parlia-
ment, and the Statute of Labourers, 5
Ediz.4. and for taking Fish, Deer, and
About
Suits inter
partes.

Hawks, 5 Eliz. 21. which may be at any Sessions of the Peace.

It seems in all Cases where direction and power is given by any Statute to sue for a penalty in any Court of Record within this Realm, as in any of the Kings Courts, as in 1 Jac. 17. 18. 19. 24. 20 and divers others, it may be sued here; *Contra*, if it be in any of the Courts of Record at Westminster, as 1 Jac. 21. 10. 21 Hen. 8. 5. and many others.

About
making of
Orders.

Fine for
contempt
in *facie*
Curie.
Commit-
ment.
Indict-
ment.
Good be-
haviour.
About the
conspira-
cy of Vi-
tuallers
or Work-
men.

34. At this Sessions as well as at the Quarter Sessions the Court may make such Orders as they have been used to make according to Law, and they may annex a penalty, but how they may recover it, *quare*; for it seems there is no Law for it, yet doubtless for any affront or contempt in *facie Curie*, or offence in an Officer of the Court, they may fine or imprison, for this power every Court of Record hath. And upon other Orders made consonant to Law and Reason, perhaps they may punish disobedience, especially if it be joyned with contempt, by Indictment, binding to the good behaviour, or Attachment; *Quare* of these things, *Cook* 8. 61. 49.

35. If any Butcher, Brewer, Baker, Poulterer, Cook, Costermonger, or Fruiterer, conspire not to sell their victuals but at certain prices. Or Labourers or Artificers, conspire not to work but at such rates, or not to finish what another hath begun, or to do but a certain work a day, or to work but at certain hours, the first offence ten pound,

pound, or if not paid within six days, twenty days Imprisonment with bread and water only; the second offence twenty pound, or not paid within six days, Pillory; the third offence forty pounds, and not paid within six days, Pillory and loss of one of his Ears, and this may be executed in this Court as well as in the Quarter Sessions, 2 & 3 Ed. 6. 15.

36. The offence in selling Wine against the Statute of 7 Ed. 6. 35. About Wines. about Wines, may be punished here as well as at the Quarter Sessions.

37. Any default in the Owners or Governours of Fairs, Keepers of the Toll-Book contrary to 2 & 3 Phil. & Mar. or 31 EL. 12 is here determinable as it is in the Quarter Sessions. So any default against the Statutes made for the ordering of Malt-making, 2 Ed. 6. 10. About Horses sold in Fairs. Malt.

All those things which by any Act of Parliament are appointed to be done at any Sessions, and not elsewhere, can be done at no other place or time, and of this nature are all these things before and after particularly named. Such as keep Greyhounds, &c. and against 13 R. 2. 13. Such as publish false Prophecies, against 1 Eliz. 15. Such as transport Corn, against 1 & 2 Phil. & Mar. 5. Such as offend against most of the Branches of 5 EL. 5. about the constitution of the Navy. And such as sell by unlawful Weights and Measures against 11 H. 7. 4. All these must be punished in one of these Sessions. What may be done out of one of the Sessions.

CHAP. VI.

The Charge for the Quarter Sessions.

THE Articles wherewith you are to be charged are many, for at this Sessions all things ought to be given in charge, that do lie within the authority of the Justices to be determined. Time will not serve to tell you all, therefore that we may make the best use and yet keep our selves within the bounds of that time we have allotted to us, we shall observe this method. 1. We shall wholly pass by those particulars which are in respect of the present time, place, or condition altogether unusefull. 2. We shall onely touch upon, and lightly run over such things as are less serviceable and usefull. 3. And stay onely upon the things that are most pertinent and behoofull. In the which also we shall endeavour to be as brief as it is possible to be in so large a Tract. And therefore we shall onely name the Law, and offence against Law, without amplification or exposition, and recite onely that part of a Statute which makes the offence, and no other part thereof. We shall wynde up together, and reduce to one Head as many things as we may. 4. We shall purposely pretermitt the rehearsal of the punishments of each offence, for that they do rather appertain to the Justices than to the Jurors. And when we have done a'l, we shall be forced to charge your memory

memory with more than it can well carry away.

The Charge to be given doth consist of two parts, Laws Ecclesiastical for the peace of the Church, and Laws Civil or Temporal for the peace of the Common-weal, and in answer to this, the offences, which are the breaches of these Laws, are capable of the like division. But they do admit divers other divisions. For these offences are reducible to divers heads, some of them are given in charge here, rather for instruction or preparation, than for execution. Some of them do concern Spiritual or Ecclesiastical matters, others do concern Civil matters. Some of them concern crimes that are more penal, and of a higher nature, others of a lower nature, and less penal. Some of them are against the Common, some against the Statute Laws, some of them are publick and general, and concern the Common wealth, some private persons. And amongst these also which concern the Common-wealth, some concern the Peace, some the Justice, some the strength, some the flourishing estate, and some the ease of the Common-wealth. Again, some of them concern matter of force and violence, others matter of fraud and deceit; also among them which concern private and particular persons, some concern the body, some the body and goods together, some the goods onely, some the name. Those which concern the body are either in taking away the life thereof, or abusing it without death.

We

We shall first of all give you the things that do concern the Ecclesiastical or Spiritual matters. And these, first such as wherein this Court doth take upon it no further Conusance, but onely to inquire and discover, and so (if it have so much power) to prepare for other Courts who have power to proceed further therein. And we shall name in the first place.

Agnus Dei.
Crosses.

If any have brought from the Bishop of Rome, or any other authorized by him, any Tokens or things called *Agnus Dei*, Crosses, Pictures, Beads, or such like superstitious things, and hath offered or delivered the same to any to use or wear, and if any to such intent have taken and received the same, and not apprehended, nor within three days disclosed him to the Ordinary or some Justice of Peace, or within one day delivered the thing to some Justice of Peace, this is a *Præmunire*.

Præmunire
21 Eliz. 2.
Sending
children
100. l.

1 Jac. 4. 5

Popish
Books 40s
Books to
be burned.
1 Jac. 5.

If any have sent their Children or any under their Government to any Popish Seminary beyond Sea to be instructed in the Popish Religion, or to profess the same.

If any person have brought from beyond Seas, printed, sold, or bought any Popish Books in any Language whatsoever, or any superstitious Books in English, they are to be burned.

All these we are to inquire of onely, and now we shall name to you such offences in Ecclesiastical matters wherein this Court hath a compleat Conusance, (that is) power not onely of inquiry, but also of Oye

And *Terminet*. And the first of these is Here-
 sic and Blasphemy.

If any person who is a Recusant, convict, or his Wife a Recusant convict, have Altars, Pixes, Beads, Pictures, Crucifixes, or other Reliques of Popery, they are (if of small value) to be burnt, or else to be defaced.

If any person have said on sung Mass, he is for this to lose two hundred Marks, and be imprisoned one year. If any have willingly heard Mass, he is for this to lose an hundred pound, and be imprisoned one year.

Or if there be any such who do not once every year receive the Sacrament of the Lords Supper according to the Statute 3 Jac. Their names and the names of all their Children and Servants must be presented.

Second year. 60. l. every year after. 23 Eliz. 1. 3 Jac. 4. 19
 Eliz. 6. 10. l. a moneth. 3 Jac. 4.

Those that present them are to have a Reward of forty shillings out of their Goods and Lands.

If any do willingly maintain, retain, relieve, or keep any such Recusants in his house.

If any retain such an one for his Servant.

If any married Woman receive the Sacrament as aforesaid.

IF

3 Jac. 4.
 23 Eliz. 2.
 and yet
 some take
 these two
 offences to
 be onely
 inquirable
 not deter-
 minable.
 2 Jac. see
 29 Eliz. 2.
 Recusants
 1 Eliz.
 10. l. a
 moneth,
 and two
 parts of
 their land.
 20. l. the
 first year,
 40. l. the

10. l. by
the hul-
band or
the third
part of his Land, 3 Jac. 5.

If any Popish Recusant marry, and baptize their Children otherwise than after the custome of the Church,

Good be-
haviour,
and three
moneths
imprison-
ment.

If any do by word or deed maliciously and purposely disturb a Minister in the Service of God, or if any shall rescue such an offender,

1 Mar. 3.
Scil. 2.
Impr.

If any within three moneths last past have depraved or despised the blessed Sacrament of the Body and Blood of Christ.

three moneths imprisonment. Fine, 1 Ed. 6. 1.

Sabbath-
day 3. 1.
4. d. 2.
piece, or
sit in the
Stocks 4.
hours, for
want of
distress,
which is to
be sold,
the over-
plus re-
stored.

1 Jac. 3. 1.
4. d. and
the value
of the
things,
1 Jac. 32.
3 Car. 1.
20. s. for
every of-
fence 6. s.
3 d.
26. s. 1.

If any do not sanctifie the Lords day in the practice of the duties of piety and charity, but profane it. 2. If there have been Assemblies or Meetings of any people for any sport or pastimes out of their own Parishes, or any Bear-baitings, Bull-baiting, Enterludes, common Plays, or other unlawful Exercises in their own Parishes on that day within one moneth last past. 3. If any Shoemaker have shewed with intent to put to sale any Shoes, Boors, Slippers, or the like on this day. 4. If any do cry, shew, or put to sale, any Wares, Fruit, Goods, or Chattels on that Day. 5. If any Carrier, Waggoners, Wainmen, or Drovers, have travelled with Waggons, Cart, or Cattel on that Day within six moneths last past. 6. Or any Butcher have killed or sold any Victuals on that Day within this time. 7. Or if any do carry any other Burthen

or do any worldly work on that Day. If under
 8. Or if any use to keep, or be present at his Master,
 any Wrestling, Bowlings, Shootings, or or Father
 Ringers for pleasure, or any Wakes, or the 12.d.
 like pastime, &c. 9. If any man without 10.s. or
 good cause travel on this Day. 10. If any or in the
 Owner of a Marker keep it on this Day. Stocks 3.
 hours.

If any have profanely sworn or curst; If 167. 10.
 he be under twelve years old, he is to be 27 H. 6. 5.
 whipped by the Parents or Constable. Swearing
 12.d. or

If any one hath committed wilful perju- in the
 ry, or procured, or suborned another to Stocks 3.
 commit wilful perjury in any Court of hours.
 Record, Court Baron, or Hundred Court. 11 Jac. 20.
 Perjury
 20.1. and

6. moneths imprisonment, 40.4 or 6. moneths imprisonment.
 3 Eliz. 9. 3 Jac. 21. Fine, Imprisonment.

See for the Profanation of Gods Name
 in Plays, &c.

If any Jury charged to inquire of any
 Robbery or Felony, spare and conceal it
 out of favour and partiality, *Statute of*
Winchester, 13 Ed. 1. 1.

If any person have used Invocation or Witch-
 Conjuratⁿ of evil Spirits for any cause, or craft.
 any Witchcraft, Enchantment or Charm, Felony.
 whereby any person shall be killed, or any 1 Jac. 12.
 part of him wasted, or lamed, this is Fe- 1. offence.
 lony. If any use any Witchcraft, or Charms one years
 to finde out hidden Treasures, to tell imprisonment
 where lost Goods shall be found, or at- without
 tempt thereby to provoke unlawful love, or Bail, and
 to destroy or hurt any mans body, or to stand in
 the Pillo-
 ry 6. hours

every quarter of the year, the second offence Felony.

whereby

whereby any mans carrel be destroyed or impaired, to do this the second time is Felony.

Opinion
preached
about eat-
ing of
flesh.
5 Eliz. 5.

If any do by speech or writing divulge that the eating of Flesh upon Days not usually observed, as Fish-days, is of necessity for salvation of souls, or is the service of God, otherwise than as other politick Laws.

These are the offences about Spiritual matters, wherein this Court hath a complete Conusance and Jurisdiction.

The offences that follow in the next place are concerning Civil matters, And of these first of such as are more penal, mortal, and of an higher nature, than of others that are of a lower nature, and venial; of the first sort are all Felonies. For as touching high Treason, and some Felonies (usually given in charge in this Court) it must be to this end, either for instruction onely, or for information, and to make preparation for some other Judges and Courts, or else as it is a Felony (for every Treason at Common Law is Felony, and more) and so onely inquirable here. Now high Treason being the greatest offence, it is not amiss to shew you how many ways it may be committed; and to name those Felonies which are onely inquirable here.

To adhere to any Forces raised by the Enemies of the Kingdom. To counterfeit the Great Seal of England for the time being. But for any of these no man may be questioned above a year after the offence done.

These

The Charge for Quarter Sessions. 195

These offences are not punishable in this Court.

If any person within one year last past, Extolling have by word or deed maintained or de- foreign
fended any foreign Power, Spiritual or Ec- power.
clesiastical of any foreign Prince usurped 1. Forfeit
within this Kingdom: Or if any have coun- goods.
felled, abetted, or given aid to any such per- 2. *Pramunire*.
son in so doing. This in the third offence is High Trea-
high Treason. son.

1 Eliz. 1.

Pramunire. High Treason. 5 Eliz. 1.

If any within the time aforesaid hath by word or deed extolled, defended, or main- tained the Authority and Jurisdiction of the Bishop of Rome usurped in this Realm, or attributed any such Authority to that See, or if any have abetted, procured, coun- felled or aided any such person. This is high Treason being done the second time, the first being but a *Pramunire*.

If any have used or put in any Bull or such like Instrument gotten from the Bishop of Rome, or any claiming authority under him, or have published any such, or have taken upon him to absolve or reconcile any there- by, or if any have received such absolution, or if any have procured, abetted, or coun- felled any such offender.

1. *Pramunire*.

2. High Treason:

1 Eliz. 1.

5 Eliz. 4.

Offering of Bulls.

High Trea- son.

Or if any have aided, maintained, or com- forted such after the said offence, this is a *Pramunire*.

1 Jac. c. 4.

If a Jesuit, Seminary Priest, or any other Deacon or Priest ordained or professed by any Authority or Jurisdiction from the See of

Jesuits, Seminaries Treason.

3 Eliz. 2.

of Rome, he come, or do remain in this Realm, this is high Treason.

Premunire. Or if any give, send, or contribute any money or relief to any such for the maintenance of any Colledge or Seminary of such beyond the Seas.

Fine. Imprisonment. Or if any knowing any such to abide, do not discover it within twelve days after his knowledge to some Justice of Peace or higher Officer.

All these offences are punishable in other Courts.

To imbezle or rase a Record, is Felony. 8 H.6. ch.11. So to forge, or cause, or agree to be forged any Deed or Court-roll, or to publish any such, knowing the same to be false, the second time is Felony, 5 Eliz. ch.14.

And these Felonies are punishable by the Judges of other Courts, but not in this Court.

We shall now speak to such offences as whereof this Court hath compleat Conu-
sance, i. power to hear and end. And first of Felonies.

Felonies (we must know) are either simple or relative, by Common Law, or by Statute Law; and some are by both. And these again are either (as we have touched already) publick. And those do either concern the Common-wealth either in Treason, as in the cases before, or in Felony openly, as by carrying away our men or arms to serve other Princes, or by rebellious Assemblies, Transportation, and the like.

Or

The Charge for Quarter Sessions. 197

Or else they are private. And those be either such as do touch the body onely, or the body and goods together. Or the goods onely. That which doth concern the body onely, which is either by taking away the life thereof, which is called Homicide, or by abusing it without death, as by cutting out the Tongue, Buggery, Rape, or the like. Homicide is either of ones self or another, that of another is either voluntary or involuntary. That which is voluntary is either dispunishable by Law when it is commanded for Justice sake, or allowed or excused for other causes which be no Felonies; Or it is punishable. And that whether it be upon malice prepened, as Murder, or sudden adventure, as by a sudden falling out and in hot blood, without any premeditate malice, or in a mans own defence, or by meer chance, as Chance-medley. Other divisions by others are made of these things.

We shall begin first with those Felonies that do concern the Common-wealth, some of which we have spoken to before, And then come to them which concern private persons.

If a Goaler use his Prisoner so hardly that thereby he compell his Prisoner to be an Approver, to charge another to be a Partaker with him in the Felony, this is Felony.

Goaler
compels
ling a Pri-
soner to
approve.
14 Ed. 3.9

To offer to smite a Judge in the doing of his Office is Petit Treason, and the highest degree of Felony.

Petit
Treason.

If any had conspired to destroy any of the

198 *The Charge for Quarter Sessions.*

Conspiracy against the Kings Council. Kings Council or principal Officers, though he did not effect it, this was Felony.

3 H 7. 11. Acknowledgement of a Fine, &c. If one acknowledge a Fine, Recovery, Deed inrolled, Statute, Recognizance, Bail, or Judgement in the name of another, he being not privy, nor consenting thereunto, this is Felony.

21 Jac. 29. Multiplication of Gold or Silver is Felony. To practise the art of Multiplication of Gold, &c. 5 H. 4. 4.

Congregating of Masons. 3 H. 6. 1. If any shall cause Masons to congregate together in Chapters and Assemblies, and there to confederate to subvert the Laws, this is Felony.

Souldiers departing. 7 H 7. 2. 3 M. 8. 5. 18 H. 6. 19 5 Eliz. 5. If any Souldiers having taken Press-money do not go with their Captain, or being in service depart without licence, or any Mariners, or Gunners take Press-money, and depart without licence, either of these are Felony.

Embezzling habiliments for war. If any Souldier imbezle or convey away any Ordinance, Armour, Shot, Powder, or other Habiliments for War, or Victuals provided for Souldiers, to the value of twenty shillings, though at several times, or have sold or conveyed any Horse into forreign parts without licence, every of these offences are Felony. So if any Souldier do counterfeite a Testimonial from his Captain.

Transportation of Sheep. 8 Eliz. 5. To transport or ship away Sheep out of the Realm the second time is Felony.

The Charge for Quarter Sessions. 199

If one infected with the Plague, and ha- Plague.
ving the Sore running upon him, and being
commanded by an Officer to keep his house,
doth afterwards go abroad, and converse ^{1 Jac. 31.}
with company this is Felony.

If any person of the age of fourteen years
or above, shall call himself an *Egyptian*, or Egyptians
shall be in the company of such an one, or
shall disguise himself in apparel, speech, or
otherwise, like such an one, or shall be or
contine in *England* one moneth at one or <sup>1 & 2 Phil.
& Mar.</sup>
several time, this is Felony.

Willingly to harbour any Jesuit or Po- Jesuits: }
pish Priest born here and at liberty, is Fe-
lony.

If any incorrigible Rogue banished the Rogues.
Realm return without licence, or being
burnt in the shoulder and set home, do af- ^{39 Eliz. 49}
terwards wander abroad, each of these is ^{1 Jac. 7.}
Felony.

If any Captain or Lieutenant had served
any forreign Prince before he had given
Bond, not to conspire against the King, this
was Felony, ^{3 Jac. 4.}

If one be in Prison or onely arrested for
Felony or suspicion of Felony, and he break <sup>Breach of
Prison.</sup>
the Prison and escape, this is Felony. ^{1 Ed. 1.}

^{1 H 7. 6. 1 Ed. 3. 17. 23 H. 8. 11.}

If any idle Souldiers or Mariners wander <sup>Souldiers
and Mari-
ners.</sup>
about idly, and will not settle to an honest
course of life, or go to their place of birth, ^{39 Eliz. 17.}
or last dwelling, this is Felony, ^{39 Eliz. 17.}
Or if he go without, or counterfeit a Testi-
monial of a Justice of Peace.

34 H. 2. 23
1 H. 7. 7.

There are divers other Felonies touching Hawks and hunting in Forrests, and other matters of little use now, for which cause I shall omit them.

Now to Felonies that concern private persons, and first of Homicide.

FE LO
DE SE.

If a man kill himself he is said to be a *Felo de se*, and this is such an offence as for which if he be in his right minde when he doth it, he shall forfeit all his Goods and Chattels.

Petit
Treason.
Loss of all

The offence of killing another man is greater or less, according to circumstances. For if a Man or Maid kill his or her Master or Mistress, a Son or Daughter kill his or her Father or Mother, or a Woman kill her Husband, or a Clerk kill his Ordinary, this is the highest degree of these Murders, and it is called Petit Treason, which offence also may be committed by other acts.

Murder.
The like.

If the killing be with any malice proposed, or without any provocation, or by poysoning, or to kill an Officer in the execution of his Office, in which Cases there is malice presumed to be, this is a high degree, and is called Murder, or wilful Murder.

Man-
slaughter.
The like.

But if the killing be upon a sudden falling out and in heat of blood, without any premeditate malice, this is an offence of a lower nature, and is called Man-slaughter.

*Se defen-
dendo.*

And if one be assaulted by another, and fly as far as he can, and at last being followed so hard that he cannot avoid it, but must

in

in his own defence, and by inevitable necessity, kill or be killed, and then he kill the Pursuer, this is an offence of a lower nature and less punishment than the last. And so it is where one doth kill another by mischance, and against his will, by shooting an Arrow, or the like, this is said to be *per infortunium*, or Chance-medley, and of the same nature with the last.

Loss of
Goods.
Pardon
for Life.

Chance-
medley.
The like.

If any Woman be delivered of a Bastard-Child, and born alive, that endeavoureth privately by drowning, secret burning, or other way by her self or other, to conceal the death thereof, that it may not come to light, whether it were born alive or dead, she is to suffer as a Murderer, except she can prove by one Witness that the Child was born dead.

Bastard.

But here ere we go further, we must tell you, that there is a killing which is justifiable, or at least excusable. For if a man set upon me to rob me by the high-way, or to rob, burn, or burglarly to break my house, I may kill him. So if I be a Souldier in a lawful War, I may kill as many men as I can. If I be a Judge, I may give Sentence of Death according to Law. If an Officer, I may do execution according to that Sentence.

21 Jac. 27.
Killing
justifiable
or excusable.
Him that
would kill
or rob me
in war.
In doing
justice.

If a Traitor or Felon being pursued, fly or resist that he cannot be apprehended, the Pursuers may justify the killing of him.

So if Prisoners riotously resist the Goaler, and they are likely to break away, and he cannot otherwise suppress them. So when

To keep
the Peace.

men riotously resist the Justices and other Officers of Peace, and they cannot be otherwise suppressed, or the Peace otherwise kept. So if a Forrester, Parker, or Warrener in pursuit of one that is stealing or spoiling his Game, when being required to yield himself, he resist or fly. In all these and some other Cases, if one man kill another, he shall not be punished at all for it, neither hath he need to sue a Pardon of course for his Life, as he must do in cases of killing in his own defence, or by Chance-medley, and for the better understanding of all these things touching this kinde of crime, these general Rules must be observed.

1. The death must be within a year of the cause, the blowe or the poyson given, otherwise it is no Murder, nor punishable with death.
2. If one intend to kill one, and misseth him, and killeth another, this will be all one in construction of Law as if he had killed the same person.
3. If one be in doing an unlawful act, as beating a man, or the like, and in the doing thereof he kill a man accidentally, this is a killing punishable, and may be greatned or lessened by circumstances.
4. If divers persons come together to do an unlawful act, and one of them kill a man, & the rest stand by, & look on, they are all principal Murderers.
5. All that are present at a Murder, and do encourage the Murder, are principal Murderers.
6. It is not material who gives the first blowe.
7. It is no Murder unless the party killed be in being.
8. An intent

of

of killing, unless the act follow, is not punishable by death. 9. Infancy, madness, and compulsion will excuse a man from punishment in case of man-killing.

So we have done with Felonies private touching the body onely, by taking away the life thereof; and now are come to speak of those Felonies which do concern the body by abusing of it otherwise.

If any man wilfully put out the eys, or Cutting out of
cut out the tongue of another man; this is out of
Felonies. tongues,
&c.

Loss of all. 1 H. 4. 5.

If one commit Buggery with Man or Buggery
Beast, this is Felony, for which anciently he the like.
was to be burned. 25 H. 8. 5.

If any take away any Wife with her Husband's goods, Maid or Widow, having lands 5 Edw. 17.
or goods, or being Heir apparent to land, Taking
against her will, or if any receive any such, and carry-
ing away
women,
&c.
this is Felony.

Loss of
all. 3 H. 7. 4.

If any do ravish a Maid, or Wife, or Widow, above ten years old against her will, Rape the
like.
though she after consent to it. Or if any West. 3. 14
do carnally know any Maid under ten years 28 Edw. 5.
of age, though it be with her consent, this
is Felony.

If one marry a second Wife or Husband, Bigamy
the first being living, this is Felony; But if the like.
the party have been absent seven years, and
the one doth not know the other to be li-
ving within that time, or they be legally di- 1 Jac. 11.
vorced,

voreed, or they were married within years of consent, it is otherwise.

Now follow such Felonies as do concern the body and goods together, or the goods onely.

The Felony that is committed by the taking away of anothers goods, is greater or less also by circumstances; for if one do feloniously take away the goods of any Parish out of their Church or Chappel, this is a high degree of Felony, and is called Sacrilege.

Sacrilege,
lofs of all.

Robbery,
lofs of all.

If one take away any thing from the person of another, any thing by way of Robbery upon the High way, of picking a Pocket, or cutting of a Purse, though it but a Penny, this is an offence of an high degree, and called Robbery.

Burglary,
lofs of all.

So likewise if one break into the house of another, where he or some of his Family are or use to be, with an intent to rob or kill in the night-time, and do or do not take away any thing, this is a great offence, and is called Burglary. So to rob a house, Barn, or Stable in the day-time, to the value of five shillings, though no body be in it, and put in fear, or to rob him in any part of his dwelling house, any of his household being within it.

Felony,
great and
small.

Or to rob any Booth in any Fair or Market, any person belonging to it being within it, sleeping or waking; all these Felonies are Burglary: But if in other Cases one man do feloniously take away the Goods of another against his will, be it Horse, Sheep, Plate,

Plate, or any other alive or dead thing, if it be above twelve pence in value, this is Felony; yet in this case he shall have his Clergy for his Life. But if the thing taken be under twelve pence in value, then it is a offence called Petit Larceny, for which the offender is onely to be whipped. Petit Larceny.

If any Servant trusted with his Masters goods to the value of forty shillings, or more, imbezle the same, this is Felony. Whipping.

If one wittingly burn any house, or barn full of Corn, or any out-house adjoyning to such a barn, or dwelling-houie, in the night or day, this is Felony. Also the burning of any oth r house, or stack of Corn feloniously, is thought to be Felony by the Common Law. So also if a man wilfully burn his own house, and thereby burn his neighbours house also. So if one burn a part of his neighbours house wittingly, and it be quenched, this is Felony. If one do maliciously cut or burn any frame of building provided for a house, whereby it is made unserviceable, this is Felony. But in *Holmes case* 10 *Car. Banc. Roy*; it was resolved by three Justices that the burning of a mans own house with intent to burn others is not Felony, but for that it was an exorbitant offence he was fined five hundred pound, and imprisonment, and good behaviour. Servants trusted with goods. The like. 21 H.8.7. Burning of houses. The like.
5 H.4.5.
1 Crook.

Now for the better understanding of these things, and Larceny in general, you must know, 1. It must be of Goods and Chattels, personal and moveable. Therefore

fore the stealing of Chattels real, as Charters of Land, an Infant in Ward is not Larceny. Nor of such things as are part of the Freehold unsevered; as fruit from a Tree, Lead from a House or Church. Yet if one cut down a Tree one day, and fetch it away to morrow, it may be Larceny.

2. The party from whom they are stolen must have Property and a Possession. And therefore to steal Goods hidden, waved, or wrecked, or strayed, is no Felony. So to steal things that are wilde of nature, as Doves abroad, Fishes in a River, is no Felony, except it be young Pigeons in a nest, and so restrained by nature, or Fish in a Stew or Pond, and so restrained by place, or made tame by art, as tamed Deer. But to take the flesh of any wilde Fowl dead, or the wool from off the Sheeps back, is Felony.

3. They must be things of profit, therefore to take away Dogs, Apes, Parrots, singing Birds, and the like, is no Felony.

4. It must not come to the party taking away by the delivery of the Owner; yet if a man have the use onely, as of Plate in a Tavern, or one deliver the Goods to carry to one place, and he carry them to another, or carry them to the same place, and then takes them away, this is Felony.

5. The things are carried or led away; yet if one move the Goods out of their place, with a felonious intent to steal them, though he carry them not out of the house, it is Felony. So if one stealing away a Horse, be taken in the manner, so that he can-

cannot carry him away, this is Felony.

Thus for *Simple Offences*. Now for *Relative Offences*, whereby a man doth participate of anothers offence.

One may be accessory to anothers offence two ways, either before or after the same is committed. A man may be accessory before the offence committed, by commanding, conspiring, hiring, abetting, procuring, countenancing, or agreeing to it, when he is not present at the deed done. And a man may be accessory after the offence done, by harbouring, comforting, cherishing, shifting away, or concealing of the offender, knowing of the offence. And by this he may make himself as far forth guilty and punishable as the principal offender, consentors, actors, and instigators, that suffer the same punishment. Touching this thing, ~~these~~ Rules and Cases are to be remembred. 1. In Treason and Trespasses, all are Principals, and there is no accessory. 2. If one command an evil act, as to beat another man, or the like, and Felony proceed thereupon, he is guilty of this Felony, otherwise where the act is lawful, and that effect followeth. 3. If one command a Felony, and it be done in another fashion, time, place, or manner than was commanded, yet he is accessory to it. 4. But if one command one Felony, and he do another, or it be executed on another person; or if one do onely know of a Felony, and not give consent to it, or be present at it (not being party or privy to it) and

and do not disturb it, or pursue the Felon. 5. If one pursue a Felon by Hue and Cry, and take him, and then take his Goods, and let him go, or take money of him not to give Evidence against him, or receive stolen Goods, knowing them to be stolen, by either of these he maketh himself accessary. 6. But to take a mans own Goods, and no more, or to endeavour to deliver a Felon, or to take stolen Goods into his house, not knowing of it, and no more, will not make a man an Accessary. But if a man buy stolen Goods he knoweth to be so, and for a small matter, it is dangerous. 7. Felony by Statute hath Accessaries before and after the Fact done, though the Statutes speak not thereof.

By breaking of the Prison.
The like,

A man may make himself guilty of anothers offence by a labour to shift the offender from the justice of the Law. As if one in Prison or under Arrest for an offence, or upon a suspicion of it, and another break the Prison, and help to convey him away secretly or openly, by this he makes himself guilty of his offence.

By rescue of the Prisoner.

So if one be attainted, arrested, or imprisoned for an offence, or upon a suspicion of it, and another doth forcibly rescue him out of his hands that hath him, by this he maketh himself a principal offender guilty of the same offence, and liable to the same punishment whereof the party rescued is guilty, and to which he was liable.

s.l. good behaviour

If any hinder by rescue, or otherwise, the execution of the Statutes against Rogues, or for the poor.

A man

A man may make himself partaker of another's offence also by an Escape. And this either voluntary or negligent. If one have a Prisoner under Arrest for an offence, and he do willingly suffer him to escape, this in most Cases is as great and dangerous an offence as the first; as if the first offence be Treason, this is so also; yet if the first offence be Man-slaughter, this is onely fineable. But if the primitive offender escape against the will of him that hath the custody of him, this offence is onely punishable by Fine and Imprisonment. If a man be slain in the day, and the Felon not taken, the Town-ship is to be amerced.

A man may make himself in some measure guilty of another's offence by concealment of it. For if one conceal a Treason, this is a misprision of Treason, and is Felony. And if one conceal a Felony, this is a misprision of Felony, for which a man is fineable; for every man is bound as much as he may, according to the duty of his place, to prevent and hinder these evils. And therefore if one stand by and look on whilest a man is slain, and do not his best to prevent it, or after he is wounded to attach the Murderer, he may be indicted and fined for it. And so if he attach him, and after let him escape.

Now we shall descend to the offences which are venial, and of a lower nature; And first of such offences which are directly against the Peace of the Kingdom.

These are some of them accompanied with

39 El. 3. 4.
By escape
voluntary
or negligent.

3 H. 7. 1.

By misprision.

11 H. 4. 12.
Statute 35.

Trespassers
with

with a kinde of violence, or at least a shew of violence. And some of them are without violence, and accompanied with a kinde of fraud, deceit, or negligence. The first sort are either extraordinary, as Maims, Riotous, and forcible unlawful Entries, or the like; or ordinary, as Assault, Battery, and the like. And all these are within the Commission under the word Trespass.

Maims,
grievous
Fine.
Imprison.
till paid.

If one maim another, that is, by violence offered to his person, deprive him of the use of any one of his principal parts, as his Eye, Foot, Hand, Fore-teeth, Head, or the like, or break his Skull, or any Bone of his Body, whereby he is less able to defend himself, or offend his Enemy. For this he and his Accessories shall be grievously fined. But if it be such a hurt as is onely a Deformity in the Body, as the cutting off the Ear or Nose, or beating out of the grinding Teeth, or the like: This though it be a Wound, yet it is no Maim.

Lying in
wait. Fine.

If any have lain in wait to maim or kill another, so that he dare not go about his business; This in the Commission is thus expressed, *De his qui ad gentem nostram machinantur. vel interficiend. in insidiis jacuer.*

If any challenge another to fight him, it is inditable, especially if he send a Challenge in Writing.

Destroy-
ing houses,
Parks, &c.
Fine, Im-
prison. 3.
moneths.

If any do outrageously or riotously pull down, or spoil any Houses, Pales, Mills, Dove-houses, Bays, Ditches, Inclosures. Or spoil, or rob any Fish-pools, Parks, Warrens, or take any Hawks or Hawks eggs, or the like.

The Charge for Quarter Sessions. 311

If any do maliciously strike another in the Church or Church-yard with a Weapon, or draw a Weapon to that purpose, this is a great offence. So to strike another in the presence of a Judge is a great offence. So to strike an Officer, especially in the doing of his Office. So for a Servant to strike a Master, Dame, or Overseer, is a great offence.

Striking in a Church-yard, is of an ear. To be marked with an F. Great fine. Good behaviour.

Ordinary Trespasses follow. If a man do unlawfully assault, imprison, beat or wound me, or unlawfully take away, break or spoil my Goods; chase, kill or hurt my Cattel, break or enter into my House, enter into my Land, cut, spoil, eat up, or tread my Grass or Corn, break my Walls, dig or carry away my Earth or Coal, lop, fell, bruise, or break my Hedges, or Trees, carry away my Wife, Son and Heir, or Ward, or unlawfully arrest my Goods or Cattel, break, or cut my Sluces, or shear my Sheep, let out the Water out of my Mill pond, beat my Servant so that I lose his service, or do me any other such like wrong, for which I may have an Action of Trespass against him, For this offence he may be indicted and fined in this Court And yet I have my Action against him notwithstanding. For in all these Acts there is a double offence, the one against the King, for which he is to be punished by fine, the other against me, for which I by my Suit shall have amends in Damages.

Assault.

If any lawd person have or hath procured to be unlawfully cut or taken away any

X

Corn

First of-
fence a-
mends or
whipping.
2. offence
whipping
and good
behavi-

Corn growing, or rob any Orchard or Gardens, or break and cut any Hedge, Pale, Rail, or Fence; or dig, pull up, or take away any Fruit-trees, or cut or spoil any Woods, Under-woods, Poles or Trees standing, not being Felony.

our, and House of Correction, the Constable to be committed till he procure him to be whipped. 4 Eliz. 7. 7 Jac. 4. Imprisonment three moneths. 3. Damages.

Fine

13 Jac. 13.

7 Jac. 15.

If any have by night or day unlawfully broke or entred into any Park impaled, or other several Grounds inclosed, used for keeping of Deer; or in the night time unlawfully, and there hunted, driven, or chased out, taken or killed any Deer or Conies against the Owners will.

There do follow in the next place such Trespasses which are accompanied more with fraud and deceit than with force and violence.

Conspira-
cy.
Fine.

If any do conspire and confederate together, to cause another to be unjustly indicted for an Offence, whereof he is after ward acquitted. And in this four things must be known. 1. That there must be two or more persons in the plot of practise. 2. There must be an Indictment and Arraignment of the party. 3. All this must be voluntary and advised. 4. The party indicted must be in lawful manner acquitted, otherwise the party is not indictable.

Libell.]

If any do libell against another man, that is, make or promote any scandalous Writing

ring or doing to the defamation of another man, especially if he be a Magistrate.

If any man slander me by such words as Slandrous for which I may have an Action of the Case, words. as to say I am a Traitor, Felon, Thief, Robber, or the like, for this he may be indicted *Cook par. 4* and fined. But not for words that will not *Inst. 181.* bear an Action, though they are Motives to the Breach of the Peace.

If any man do so deceive as I may have Deceit, an Action of the Case for the deceit; It seems for this offence he may be indicted also. And therefore if one sell me that which is none of his own, or sell me false and deceitful Wares, or play with me with false Dice; Or being a Millard do change my Grift, this is punishable here: And so is any Misfeasance by a Nuisance, or otherwise *Misfeasance.* where an Action of the Case lieth, and the Nuisance: Writ is against the Peace. And therefore a man may be punished here for stopping a Ditch, whereby my Ground is drowned, over-riding my Horse, disturbing me in my way, Office, Burial, or the like. So for stopping of my Lights, laying Blocks in the High-way, whereby my Horse is occasioned to stumble, and I am hurt. So for any other Nuisance done to men in the Water, Air, Light, or Ways: as by setting up Houses of Office, Lime-kils, Dye-houses, unnecessary Gates, or turning of Waters in the High-way. But to set up a new Mill, a new Pidgeon-house, or a new Coniger is no Nuisance.

If any water any Hemp or Flax in any River

Warring
Hemp.

5 H 7 17.

False to-
kens.

Any cor-
poral pu-
nishment
but Death

Riv: r, Stream, or common Pond wh re
Cattel use to drink.

If any one get the Goods of another by
privy Tokens or counterfeit Letters, in
other mens names, to persons that are
their special Friends and acquaintance.

the Justices shall set down. 31 H. 8. 1.

Forgery.
Fine, and
Imprison-
ment.

If any forge a Deed, that is, make and
publish any false Decil or Writing to the
prejudice of anothers right, either to
charge or get his Land or Goods; as if a
Copy-holder make and publish a Customa-
ry for an Usage, and put Seals to it, to the
prejudice of the Lord, or one forge a Te-
stament, whereby a Lease for years is given,
or if any man make use of any such Deed,
knowing it to be so forged. These may be
punished by the Common Law, but the po-
wer of execution of the Statute is not gi-
ven to the Justices of the Peace.

5 Eliz. 14.

Thus much of Trespasses by force or
frand.

Ride arm-
ed.

Imprison-
ment.

Loss of
Armour.
Stat.

Northam.
2 Ed. 3. 3.

Unlawful
Assemblies

If any man but such as have authority,
go, or ride armed in an unusual manner,
this is an Affray and Breach of the Peace,
and every man may arrest them. This of-
fence is thus expressed in the Commission;
Of those who in Conventicles against our
Peace, to the perturbation of our peo-
ple, or with armed Force have gone
or rid.

If three or more come together with an
intent violently and forcibly to commit an
unlawful act, as to beat or wound a man

c nter

enter into, break or pull down some house, wall, pale, hedge, or ditch, wrongfully enter into a mans possession to claim, or take a common or way, to destroy any Park, Mill, or stacks of Corn, take away a mans wife, or the like- and they do willingly depart, and do nothing, yet this is an unlawful meeting, and punishable.

If after their meeting they move forward's towards the execution of the act, whether it be done or no, it is a Rout. And if it be done it is a Riot. So that every Riot doth include a Rout, and an unlawful Assembly. And that act which is a Riot in the execution, is a Rout, and an unlawful Assembly in the preparation. And that which is an unlawful Assembly in the first meeting, is a Rout in the further proceeding, and a Riot in the final execution. To prove this there must go three things. 1. There must be three persons at the least gathered together. 2. Their intent in the first meeting must be evil. 3. Their being together must breed some apparent disturbance of the Peace, either by speech, shew of Armour, turbulent gesture, or actual and expreis violence, to affright peaceable men, or embolden light men by their example.

If any stir up another to do such an act, 3 H. 5. 17. or if any be stirred up hereunto, and do not within twenty four hours after disclose it to the Sheriff, or a Justice of Peace. But herein you must know, that this doth not prohibit Assemblies to lawful ends, as to do

execution of Justice, to take down common Nuisance, for a lawful Recreation, or the like.

Affray.

If any great Affray be made in a disturbance of the Peace, and you are to finde who they were that did it, and in what manner it was done.

Prophecy

20.1.

Imprisonment a

year with-

out Bail,

10 H. Imprisonment during life, loss of all his Goods and

Chattels, 5 *Eliz.* 15.

If any divulge any Prophecy with intent to make Rebellion, or other disturbance in the Realm.

But he must be charged within six moneths after the offence is done.

Forcible

entry, or

detainer.

Imprison-

ment,

Fine, and

to remove

the force,

and upon

pledges,

found for

the Fine

to deliver

them.

Make re-

stitution,

but not

without

Inquiry,

5 R. 2. 7.

15 R. 2. 2.

8 H. 6. 9.

31 *Eliz.* 11.

21 *Jac.* 5.

20 H. 6. 5.

Riot.

If one make forcible entry into Lands, and do forcibly detain Land (that is) do violently and actually enter into any Houses, or Lands, or take any Distress being weaponed, whether he offer violence, or fear of heart to any there, or furiously drive out any out the Possession thereof, or not, or having entred into the Lands peaceably, doth after hold the same with force, which is said to be a violent act of resistance by a strong hand of men weaponed with Harness, or other action of fear, by which the lawful entry of Justices or other is barred or hindered: for the better understanding whereof, you are to know these things. 1. That one man alone may commit this offence. 2. That an Infant or Feme covert, as they commit most other criminal offences, so they may commit this offence. 3. If divers come in company to do this or any other

Trespass,

Trespass, and one of them alone doth the wrong, and the rest stand by, and look on, and do not withstand it, they are all guilty.

4. If it be done by three or more, then it is a Riot, which of its own nature is a great Trespass also.

If any one above fifteen years old, under the degree of a Knight, required by any Justice of Peace, or the Sheriff, to assist in the suppressing of a Riot, and the punishment of the Rioters, refuse it. Great fine.

Offences against the justice of the Kingdom.

The Statutes of *Winchester* are especially commanded to be given in charge, the Articles whereof are as followeth,

For the apprehending of Felons, Hues and Cries must be solemnly made in all Counties, and Hundreds, Markers, Fairs, and all other places where resort of People is, and immediately upon the Felony committed, fresh sute must be made from Town to Town, and Countrey to Countrey; and every man as well within Franchises as without, is to be ready at the commandment of the Sheriff, and cry of the Countrey, to sue and arrest Felons, Statute of *Winchester*, 13 *Ed. 1. Chap. 2.* So that if a Felony be done, and he to whom it is done, or another of the company, or some other cometh to the Constable of the next place, and doth tell him of it, and describe the Felon, and which way he is gone, the Constable is presently to call upon the Parish, and they are to make a fresh pursute, Hues and Cries.
Fresh sute:
Fines

and an earnest and diligent search for him; and if they finde him not, to tell the next Constable, who with his Parish also are to do likewise, and so to follow the pursute of the Felon to the Sea-side, or till he be apprehended.

Dalt. Just.
Pl. ch. 28.
Grievous
Fine.

If any Sheriff, Coroner, Steward, Bailiff of Franchise, or other, shall for fear, favour or reward, conceal or consent to the concealment of any Felony, or do not his Office in the arresting of Felons, and his endeavour to punish them, if any neglect thereof have been therein. If Hues and Cries have been raised without cause, or having cause, if they have not duly raised, and effectually pursued, you are to present it.

Watch.

In great walled Towns, the Gates must be shut from Sun-setting to Sun-rising, and no man is to lodge in the Suburbs, nor out of the Town, from nine of the clock till day, unless his Host will answer for him, and the Bailiffs of the Town must inquire of such persons, once within every fifteen days, and if they finde any man to have harboured such suspicious persons, they are to be punished as Breakers of the Peace.

Stat.
Watch.
ch. 4. § H.
4.3.

You are therefore to inquire whether the Watch be kept from *Ascension-day* till *Michaelmas*, from Sun-set to Sun-rising, and with a number of men, as is fit for the place. And if any stranger pass by them, they must arrest him till the morning. And if then he seem suspicious, they must deliver him to the

the Sheriff. If otherwise, then they are to let him go; and if he refuse to submit to the Arrest, and get away, they may send Hue and Cry after him, till he be apprehended. *Stat. Winch. c. 4. 5 H. 4. 3.*

There are many Law Officers. Officers, Sheriffs, Bailiffs, Constables, Escheaters, Ordinaries, Coroners, Clerk of the Market, Overseers of the Poor, and others. They altogether speak thus much in the general, that Officers must be skilful, and faithful, attend their charges, and be content with their wages. If any negligence or corruption be found in any of them, it is to be punished here

This offence is thus set forth in the Commission. As also whatsoever Sheriffs and other Officers, who in execution of their Offices about the premises. or any of them unduly have behaved themselves, or slack, remis, and negligent have been.

If any Under-sheriff, Bailiff of Franchise, or Sheriffs Deputy, appointed to have to do in the returning of uries, or execution of Process, do intermeddle therewith before he hath taken the Oaths set down in 27 *El.* ch. 12. or after he is sworn, do any thing against these Oaths. *Sheriff forry pound, if he impanel any Jury before.*

If the Sheriff return Issues upon Jurors not having summoned the man. *27 Eliz. 6.*

If a Sheriff imbezile a Writ, or make a false Return. *Treble damages and Fine,*

If he or his Officers levy the publick Debts by Rolls, and not by Estreats under the Exchequer Seal, 42 *Ed.* 3. 9. or they do not roll

roll that which is paid, so that he be made to pay it again, or take unreasonable Distress, or take a mans Sheep, or Plough, Cattel, when there is enough other, or distresses the Fee of the Church, or drive the Distress out of the County, nor out of the Hundred, but to a Pound overt, within three miles.

Letting his
Bailiwick
Return of
Pannels.
Bail.

If any Sheriff let his County, or any of his Bailiwick, Wapentakes, or Hundreds, or have returned in any Pannels, any Officers, or their Servants, or Servants Servants, have refused to let to Bail upon sufficient Sureties any person arrested on an Action personal, or an Indictment for Trespass, not being in for Condemnation, Execution, Outlawry, Excommunication, Surety of the Peace, or commanded of any Justice, or for being a Vagabond, or if he have taken any Obligation by colour of his Office, but onely to himself, and upon the name of his Office, and upon condition onely to appear according to the Writ or Warrant.

Forty
pound for
every of-
fence, tre-
ble dama-
ges to the
party grie-
ved.
Obliga-
tion.
23 H.6.10.

County
Court.

Forty shil-
lings eve-
ry offence.

If any Sheriff or his Ministers have entred into his Book any Plaints in any mans name, not being present at the Court himself, or by his sufficient and honest Attorney, or Deputy; or if he hath entred any more Plaints than the Plaintiff supposeth he hath cause of Action for. Or if he hath levied the Shire-americiaments without a Book indented between him and two Justices of Peace. Or if the Bailiff of the Hundred have made default in warning, or executing

cutting any Warrants against any Defendant in the Sheriffs Court; Or if the Bailiff be not sworn before the Justices of Peace, to collect no more money than what is in these Estreats. 11 H. 7. 15

Or if the Sheriff do not see that the Plaintiff do put in Pledges to prosecute his Action. Return five Marks to the King, five Marks to the party.

If any Sheriff that hath the Return of any Writ, return any Juror without the addition of his place where he doth now, or did within a year past dwell, or some other addition whereby he may be known; or if any Estreat of Issues hath been gathered of any person other than such as by virtue of the said Estreat was of right chargeable.

If any Sheriff or his Officers having received money for the Forfeiture of a man for selling of Beer to an unlicensed Ale-house upon the Statute of 4 Jac. 4. and refuse to pay it to the Church-wardens and Overseers. 27 Eliz. 7. Double value.

If he do not return sufficient Jurors to inquire of forcible Entries, or otherwise neglect the Justices Warrant. Return of Jurors 20. pound. 8 H. 6. 9.

The Clerk of the Market, or other Officer for that purpose is to mark and seal such Weights and Measures as are brought to him. 2. According to the Exchequer-Measure. 3. This he is to do but once, not every year. Clerk of the Market.

If a Goaler suffer a Prisoner to have more liberty than is fit, for Prisoners must be kept in safe and close custody. Or if he refuse Goaler fineable.

use to take in such Prisoners as are sent to him, or suffer Escapes.

Steward
of Leets,
13 R. 2. 8.

If any Steward of a Leet, or Officer of Market town have taken any Fine for Breach of the Assize of Bread or Beer in such Cases where corporal punishment is appointed.

Coroner,
forty
pound,
1 H. 8. 7.

If the Coroner do not come upon request, and inquire upon the view of any person slain, drowned, or otherwise dead by mis-adventure.

Escheator,
forty
shillings,
12 Ed. 4. 9.

If any Escheator take upon him the Office, not having twenty pound a year Land in the County, or sell or let to farm his Office, or make Deputies for whom he will not answer, or whose names he hath not certified unto the Exchequer within twenty days.

Ordinary,
ten pound
21 H. 8. 6.

If the Ordinary delay to prove Wills at the pay and Fees appointed, or to grant Administration according to the Statute, or to deliver Copies of Testaments or Inventories.

Owners
and Ru-
lers of
Fairs and
Markets
forty
pound.
Forty shil-
lings.

If any Owner or Officer, Ruler of a Fair, have not appointed one certain open place there, for sale of Horses, Geldings, Mares and Colts, and one sufficient person to take Toll, and keep the said place, and take Toll there from ten a clock to Sun-set. And take any Toll after or before, or elsewhere. And if he have not the parties contracting, and Horse for which the Contract is made present. And do not take and keep a Book, and therein write the names of the persons contracting, the place of their dwellings,

The Charge for Quarter Sessions. 223

dwelings, and colour, or some special mark of the Horse.

If any have in any Fair or Market sold or put away any kinde of Horse, until the Toll-taker, or chief Officer there will take upon him perfect knowledge of the person, his name and place of dwelling, and enter the same into his Book. Or unless the seller bring to the Toll-taker one credible man that will testifie that he knoweth the man, his name, mystery, and place of dwelling, and then enter the same. And the names, mystery, and place of the Testifier, and the price of the Horse. And if any testifie that doth not truly know the same, Or if the Toll-taker shall refuse to give a note to him that buyeth of that Entry, paying two pence for it.

1 & 3 Pb.
& Mar. 7.

Five
pound
every de-
fault.

If the Toll-gatherer, or Book-keeper do not within a day after the Fair or Market bring his Book to the Governour. And if he do not cause a note to be made of all the Horses sold, and subscribe his name or mark to it.

31 Eliz. 13
Forty shil-
lings every
fault. 2 &
3 Pb. &
Mar.

If Head-officers of Towns have not twice a year made view and examination of the Weights and Measures there, and break and turn the defective.

Head-offi-
cers of
Towns,
fine.
11 H. 7. 4.

If the Constables and Church-wardens do not present the monethly absence of Recusants from Church.

If the Constable or other Officer do not his Office against Drunkards, up. n 4 Jac. 5. Or if he do not his duty in the levying of money upon Ale-house-keepers according to the Statute.

Consta-
bles, Over-
seers of
the Poor,
Church-
wardens.

1 Jac. 9. If the Constable hath not punished Rogues
ten shil. according to the Statute of 14 Eliz. 5. 1 Jac.
liings to be c. 7. especially when they are brought to him.
levied by
distress and sale twenty shillings.

**Double
the value.**

If the Church-wardens and Over-seers of
the Poor, to whom money forfeited by 4
Jac. 4. is payed, do not bestow the same
amongst the Poor, according to the Statute
of 1 Jac.

If the Church-wardens do not levy the
Money for the relief of Prisoners, according
to 14 Eliz. 5. 1 Jac. 25.

**Twenty
shillings.**

If the Constables and Church-wardens
do not in Easter-week chuse Supravisors
every year to look over the High-ways ac-
cording to the Statute of 2 & 3 Phil. &
Mar. c. 8.

20 H. 6. 8.

If Constables do not assist men against the
unjust taking of Purveyors, being re-
quired.

Fine.

If either of these Officers slight or neglect
to execute the Justices of Peace his Warrant,
in case where they have authority, and are
commanded by it.

**Five shil-
lings a
week, five
pound,
good be-
haviour.**

If Constables and Church-wardens do
not pull down May-poles within their
Parish.

If Over-seers of the Poor put out such
Poor out of their Parish, as ought not to be
put out, against 39 Eliz. 4.

**Twenty
shillings
every de-
fault.**

If the Over-seers of the Poor do not their
duty according to the Statute of 39 Eliz.
34. 43 Eliz. c. 2. as to set the Poor on work,
make and levy Rates, meet monethly and
give account,

If

The Charge for Quarter Sessions. 225

If Constables and such like Officers do not their best to keep the Peace, to part Asprayers, keep them asunder, and if he do not bring them to Prison when he hath done.

If they refuse to give account, to be committed.

If the Minister of the Parish do not keep a Register-book to enter the Testimonial for Rogues, according to 30 Eliz. 3 & 4. And there must enter Licences for sick persons to eat Flesh, and a Testimonial for Servants departing from their Masters.

Minister.

If a common Informer inform after he is legally put out, or being duly in, compound with any Offender, without licence of the Court, or doth follow any Sute by his Deputy, and not in person, or by his attorney in Court, or if he compound before the Party answer, or after, or take any Reward or Promise, without consent of the Courts at Westminster, or one of them.

Informer,
18 Eliz. 5.
20 Eliz. 10
31 Eliz. 5.
Pillory
two hours
on a Market-day,
ten pound
and deposed.

If the Gawger do not gawge all the Vessels that come into this Realm within the limits of his Office, according to the contents of the Statute, 28 H.8.14. and mark upon the head thereof his content, according to R.3.13.

Gawger.
four times
the value
of that
which the
Vessel
shall lack.

If Bailiffs and Heads of Cities, Burroughs, and Market-towns, and Lords of liberties out of such places, do not yearly appoint and swear two or three, or more, skilful and honest men, to be Searchers and Sealers of Leather there, and six honest men to try it. Or if such Searcher, or Sealer refuse to execute his Office; or if Searchers refuse or delay, and do not their duty

Searchers
and Sealers
of Leather
forty
pound.
Ten
pound.

Five
pound.
Forty shil-
lings,
1 Jac. 22.

ty, or if Searchers, or Sealers refuse or
lay to seal good Leather, or allow unstuff
ent Leather, or receive any Bribe for ex-
cuting of his Office.

Treasurers
for main-
ed Soul-
diers, 43 Eliz. 3.

If the Treasurers of the Countrey-stock for
poor maimed Souldiers and Mariners, do
their duty according to.

Searchers
of Tyle
ten shil-
lings eve-
ry default.
17 Ed 43.
Attorney.

If the Searchers of Tyle appointed by
the Justices of Peace, do not search at
Tyle, and present the defaults of Tyle-ma-
king at next Sessions.

If an Attorney sue another man of his
own head in anothers name, without au-
thority, or discover his Clients counsel, or
the like; or he admit another to follow
Sutes in his name.

Supravis-
ors of
the High-
ways ten
shillings,
2 & 3
Phil. &
Mar. 8. 5 Eliz. 15.

If the Supravisors of High ways do not
set the Inhabitants their days for work for
them and their Ploughs, and see they do
and present the defaults according to the
Statutes to the next Justice of Peace with-
in a moneth.

Gover-
nour of
the House
of Cor-
rection.
Overseers
of Cloth
ten pound
every de-
fault.
3 Ed 6. 2.

If the Governour of the House of Cor-
rection do not his duty according to
Eliz. 4. 7 Jac. 4.

If the Over-seers of Cloth appointed by
the Justice of Peace, do not their duty,
looking to the Cloth that is made, that the
Ordinance of Parliament be observed.
They are once a quarter at least to visit the
Houses and Shops of Cloth-workers, Dyers
Drapers

Drapers, and to view the Cloth made. Or
if they refuse or neglect their Office, or to
take their Oath. If they refuse to appear,
or be bound in a Recognizance.

23 Jac. 1. 8.
35 Eliz. 2. 10
43 Eliz. 1. 16
to be com-
mitted till
paid, five
pound, committed till paym^{ent}.

If the Collectors of the money for the
relief of the Prisoners in the common
Gaol, do not their duty according to 14
Eliz. 5.

Collectors
for Prison-
ers in the
common
Gaol.

If Purveyors take Goods, and not pay
for them; Or if any such Officers have pro-
cured any to be arrested, or vexed, for re-
sistance of their unjust demands. If they
take Sea-fish from any Sea-man against his
good will.

Purveyors
2 H. 6. 8.
3 H. 6. 2.
Double
damages
twenty
pound.

If any Purveyor of Timber have felled
any Oak timber fit to be barked, but ac-
cording to the Statute of 1 Jac. 22.

Double
the value
5 Eliz. 2. 5.

If the Treasurers for the relief of the
Prisoners in the Kings Bench and Mar-
shalsey, do their duty according to 43
Eliz. 2.

Treasurers
for the
Kings
Bench.

If any Officer by colour of Office, be he
within or without a Liberty, require more
money for the doing any part of his Office,
than is due and appointed, this is extortion.
And this is within the Commission, in these
words, Of Extortions.

Extortion.
Fineable.
27 H. 8. 29

By *Westmin. 1. 3 Ed. 1.* No Minister of the
King may take any Reward for doing his
Office.

1 H. 4. 1. 1.
Fitz. J. P.
190.

The Sheriff is not to take above twenty
pence for an Arrest; neither he nor any
Officer

Sheriff of
his Off-
cers.

Forty
pound for
every of-
fence.
Treble
damages
to the par-
ty grieved.

Officer of his to take any thing for any Re-
turn or Pannel, or to take above four pence
for the Obligation, or any Warrant or Pre-
cept, nor is he or any Bailiff to take above
four pence for any Arrest: Or the Gaoler
to take above four pence upon the Commit-
ment of any person arrested to him; nei-
ther he nor the Gaoler are to have any
thing of Constables, or Townships, when
they deliver in Felons to them, yet they are
to receive them.

23 H. 6. 10

29 Eliz. 4.

The Sheriff for doing execution upon
body, lands, or goods, is to have but twelve
pence in the pound under a hundred
pounds, and six pence for the residue.

Escheator.

An Escheator is to take for the execution
of a *Diem clausit extremum*, or other Writ
in one County, but forty shillings in all.
And if the lands be not above five pounds,
he is to take but fifteen shillings in the
whole. And where the lands are not found
to be held *in capite*, he is not to take any
thing at all.

23 H. 8. 17.

Coroner.
Forty shil.

The Coroner is to do his office upon the
view of a dead body by misadventure, with-
out taking any Fee. And upon the view of
a dead body slain, he is to take but thirteen
shillings four pence of the the goods of the
Murderer, if he have any, otherwise of the
Town where he was slain in the day-time,
and suffered to escape.

Five pound
3 H. 7. 1.
1 H. 8. 7.

Just of P.
27 H. 8. 16.

The Justice of Peace for the Inrolment of
a Deed, is to have no more than the Clerk of
the Peace.

Ordinary,

If the goods be not above five pounds, the
Or.

Ordinary is to have for the Probate of the Will, or Letters of Administration, but six pence.

If above five pounds, and not above forty pounds, two shillings six pence for the Ordinary, and twelve pence for the Scribe. If above forty pounds, then two shillings six pence to the Ordinary, and two shillings six pence to his Clerk. Or else one peny for ten lines at ten inches. The like must be given for the Copy of a Testament, or Inventory, and to take more is Extortion.

Ministers must take but four pence for the Licence of a sick person to eat flesh on a Fish-day; two pence for a Testimonial of a Servant departing from one place to another.

If any Ordinary, Parson, Vicar, or other, take money for a Mortuary where none is due, or more than due where it is due, this is Extortion, 21 H.8.

The Clerk of the Peace is to take but twelve pence for inrolling any bargain, and sale of land not above forty shillings a year, but two shillings six pence if the land be more: He is to take but two shillings in all for any Licence and Recognizance of a Badger, Drover, Kidder, or Lader, and for the registering thereof; and twelve pence for a Licence to shoot in a Gun to kill Hawks-mear, and but twelve pence for a Recognizance of him that taketh a Rogue into his service but one year. And he is to have nothing for the recording of a Presentment of the monethly absence of a Recusant.

Ten pound
and so
much as
they take
more than
due.
21 H.3.8.
P.J.P. 72.

Minister
forty shil.
and as
much a-
bove as he
takes.
5 Eliz. 4. 5.
Mortuary
forty pun.
and as
much.

Clerk of
the Peace.
21 H.8. 16
5 Eliz. 2.
1 Jac. 21.
14 Eliz. 5
3 Jac. 4.

Mayor.

7 H. 7. 13.

Clerk of
the Mar-
ket.Cook 1. par.
of his Inst.
27. 275.Clerk of
the Peace.
9 Ed. 6. 35.Toll-taker
2 & 3 Phil.
& Mar. 7.
31 Eliz. 12.Searchers.
17 Ed. 4. 4.

If any Mayor take above a Penny for sealing a Bushel, and all other Measures above a half-penny; or above a penny for an hundred weight, or a half-penny for half a hundred weight, or a Farthing for a less weight.

If after he hath once sealed, he take any thing for the sealing thereof again, or for the shewing thereof. And he is to take no money for any Bills, &c. or Examination of Weights, &c.

He that keepeth the Standard for the Shire-town, is to have for sealing a Bushel one Penny, for the other Measures an half-penny; for every hundred weight one penny. for half a hundred weight a half-penny, and for less a Farthing.

The Clerk of the Market is to have four pence for marking and sealing a Bushel, two pence the half Bushel, one penny the Peck, and so for the rate; if he take a common Fine, all this is Extortion. See the Act of Parliament, 17 Car.

If a Justice of Peaces Clerk take above twelve pence for a Recognizance of an Ale-house-keeper or Tipler.

The Toll-gatherer is to take but one penny for one Contract, and setting down the names of the parties thereunto, and two pence for a Note of the Entry.

The Searchers of Tyle are to have for every thousand plain Tyle one penny, every one hundred Roof-Tyle, one half-penny, and every hundred Gutter-Tyle, and Corner-Tyle, one Farthing.

The Charge for Quarter Sessions. 221

If any man take above four pence for im- Extortion.
pounding one Distress. 1 & 2 Pb.

If any Officer be opposed or abused in the & Mar. 2.
execution of his Office. Officer.

If any man break or open the common Pound.
Pound, and take or let out any Distress breach.
which was therein, or let a Man out of the
Stocks, or the like.

The Instruments of Justice, as Stocks, Instru-
Pillory, Pounds, and the like, must be had men ts of
in all places; and they must be such as are Justice.
usefull, and defaults herein are to be pre-
sented.

Now follow the Articles which concern
the Trade of the Kingdom, buying and sel-
ling, and Tradesmen.

There are many Laws that concern Tra- Trading
ding and Traffick, which may be thus re- and Traf-
duced: fick.

1. None may exercise some Trades be- Appren-
fore they have been trained up in them. tices.

2 Hemp-dresser no Trade within Statute
& Eliz. 4. nor Baker and Brewer, but com-
mon Bakers and Brewers are, 1 Cook 359.
Tredland, &c.

An In keeper may bake Bread to sell in
his own house, and it is not against the Sta-
tute, *Webbs Case* in Sessions.

Pippin-monger, Upholster, Gardner, are
not Trades within this statute, nor a Plough-
man, Dauber, Thatcher, &c. *Bullstrode*
Rep. 1 part. fol. 189. See before Title *Ma-*
sters and Servants.

Tradesmen must sell true, not false and
sophistical Commodities, especially Provisi-
on.

Prices.

3. They must sell at reasonable prices and for moderate gain.

4. Bakers, Brewers, and such like Tradesmen must keep the Assizes.

5. All Tradesmen must sell by just Weights and Measures.

The offences against the Laws, are either in their entrance into their Trades, or in the use and exercise of their Trades.

Those that are in the exercise of their Trades, are; 1. In the Persons selling, or to whom the things are sold. 2. In the preparing, making, selling, or in the Commodities themselves, and things sold. 3. In the places where the things are sold. 4. In the prices of things sold. 5. In the Measure or Weight by which the things are sold. For the resistance of which distempers, some Laws are made for prevention of the Disease before, some for the correction and cure of the Disease afterwards.

If any sell Wine or Ale without authority or licence.

Wine.

Licence.

7 Ed. 6. 5. 5 & 6 Ed. 6. 25.

Appren-

tice, ten

pound.

5 Eliz. 4.

1 Car. 4.

If any man have used or occupied any Art or manual Occupation used in the fifth year of Queen Elizabeth, which hath not been brought up therein seven years at the least as an Apprentice. Yet Church-wardens and Overseers may use any Trade for setting the Poor a work.

Butchers

six shill.

eight pen.

every day.

1 Jac. 23.

If any man during the time he hath used Occupation of a Butcher, hath also used the mystery of a Tanner.

If

The Charge for Quarter Sessions. 233

If any person (during the time he hath used the mystery of a Tanner) hath used also the mystery of a Shoe-maker, Currier, Butcher, or any Artificer using the cutting and working of Leather. Tanners lose the hides, and skins tanned. 1 Jac. 22.

If any Brewer of Ale or Beer to sell, shall use the mystery of a Cooper, or make Barrels, &c. 23 H. 8 4. Brewers.

If any person other than such as had a Tan-house, 9 Martii 1603. and did then occupy Tanning of Leather, or hath been taught as an Apprentice, or hired Servant, seven years in the mystery of tanning Leather, or hath been Wife to a Tanner, or Son of a Tanner, brought up in that mystery four years, or the Son or Daughter of a Tanner (that left to the same his Tan-house and Fats) have tanned any Leather, or taken any profit by tanning thereof. Lose all the Leather tanned.

If any person being a Currier, hath (during the time that he hath used Currying) used the feat of a Tanner, Cord-wainer, Shoe-maker, Butcher, or other Artificer using cutting of Leather. Six shill. eight pence for each hide or skin.

If any one to whom any unlawful Leather hath been given by the Statute, have given or sold the same to any person that hath sold the same again. Three shill. four pence by the buyer.

If any man forbidden to make Malt to sell, do not forbear. Maltster. Imprisonment till he give Bond to obey.

If one sell another that which is not his own, and after the Owner take it away from him that bought it. Cheater.]

Brewer, If any Brewer sell his Beer to any unli-
fix shill censed Ale-house-keeper, except it be for
eight pen his own house.
the Barrel, 4 Jac. 4. 5 Eliz. 5.

If a Victualler sell Flesh on a Fast-day to
 one that hath no License to eat it.

Every If any one have bought to sell again, or
Deer forty sold any Deer, Hare, Partridge, or Pheasant,
shillings, not brought up in his house,
Hare
 twenty shillings, Pheasant twenty shillings, Partridge twenty
 shillings, 1 Jac. 27.

H. des. If any person have bought, contracted
 for, or bespoken any rough Hide, or Calves
 skin in the hair, (except Salt Hides for the
 necessary use of Ships) but such persons
 onely as shall and may by this Act ran the
 same, or will ran the same.

Leather. If any person hath bought, sold, or be-
 spoken any ranned Leather, not wrought
 into made Wares, (other than shreds or
 necks of Saddlers and Girdlers) but such
 persons onely as will convert the same into
 made Wares.

In-keeper, If any In-keeper or Victualler sell Flesh
 2 Ed. 6. 9. on a prohibited day, or any man eat it on
 5 Eliz. 1. such day.

35 Eliz. 7. If any Victualler sell, or offer to sell any
 1 Jac. 29. corrupt or unwholesom Victuals, as Flesh
Victualler. m-asted, that died of the Murrain, or the
 tell cor- like.

rupt vi-
ctuals.
Fines. If any Tanner put to sale a putrified or
Tanner rotten hide.
 three shillings four pence.

The Charge for Quarter Sessions. 235

If any Arrow-head-smith have not well boiled, brased and hardened at the point with Steel, and marked with his mark such heads of Arrows and Quarrels as he hath made.

Arrow-head-smith lose the head.
Imprisonment.

If one sell another deceitful Wares, and know them to be so, and warrant them to be right; for otherwise (except it be Victuals) it is not inditable by the Common Law.

Fines
7 H. 4. 7.
Deceit in selling.

If any Butcher have gashed, slaughtered, or cut the Hide of any Ox, Bull, Steer, or Cow, whereby it is impaired; or have watered any Hide, except in June, July, and August.

Butchers acts for every hide
1 Jac. 22.

If any Tanner have suffered the same to lie in the Limes till the same be over-limed: or have put the Hides in any Tan-sats before the Lime be perfectly wrought out of them: or have used any thing in tanning but Ash-bark, Oak bark, Tap-wort, Mal, Meal, Lime, Culver-dung, or Hen-dung: or hath suffered his Leather to be frozen or parched with the Fire or Sun; or have tanned with Cotton-hides: or have not suffered the Hides for outer Soal-leather to lie in the Woozes twelve moneths, and for the upper Leather nine moneths: or have negligently wrought the Hides in the Woozes: or have not renewed the Woozes as oft as was requisite: or have put to sale any tanned Hide not wrought according to the Structure.

Tanner.

Lose the hides or value.

If any Tanner have raised with any mixture any Hide to be converted to Backs, or Bend.

Tanner lose the Hides.

Best-leather, clouting Leather, or any other Soal-leather except the same be fit for that purpose.

Tanner.

For every hide or piece of leather six shillings eight pen. and for every 13 Calves or Sheep skins three shillings four pence, and the hides or skins or their value.

If any put to sale, or otherwise depart with any tanned Leather (red and unwrought) but in open Fair or Market in the places therefore prepared, unless it hath been first lawfully searched or sealed, in some open Fair or Market; or put to sale any Leather before it hath been first searched or sealed according to the Statute.

Tanner so much leather.

If any Tanner put to sale any Leather insufficiently, or not thoroughly tanned, or not well and thoroughly dried, and the same so found by the Triers of Leathers appointed by the Statute.

Tanners ten pound, pillory, 3 market-days.

If any have set his Fats in Tan-hills, or other places where the Woozes or Leather to be tanned in the same may take any unkinde heats, or hath put any Leather into any hot or warm Woozes.

Carrier six shill. eight pen. & the value of each skin marked (except gashing in shaving) and for double so much as the leather hurt,

If any Carrier have curried any Leather but in his own house in a Corporate or Market-town Or have curried any Leather not well tanned, or not thoroughly dried after his wet Season, or have used in such wet Seasons any deceitful means to corrupt the same; or have curried any outward Soal-leather with any other stuff than hard Tallow, or less of that than the Leather will receive; or inner Soal-leather, or over Soal-leather, but with good stuff, being fresh

fresh and not salt, or have not liquored them thoroughly, or have scalded or shaven too thin, or gashed in shaving, or otherwise, or not wrought sufficiently any Leather.

If any Shoe-maker have made any Boots, Shoes, Buskins, Startups, Slippers, or Pantofles, or any part of them, of *English* Leather wet curried (other than Deer, Calve, or Goat-skins, dressed like *Spanish* Leather) but of Leather well tanned, or curried, or well tanned onely, and well sewed with thred well twisted, waxed, and rosened, with the stitches hard drawn with hand-leathers, without mixing Neats and Calves leather, in the over-leathers thereof: or have put into any Shoes, Boots, &c. any Leather made of Sheeps-skin; Bull-hide, or Horse-hide, or into the upper leather of any Shoes, Startups, Slippers, or Pantofles, or into the neather part of Boots (the inner part of the Shoe onely excepted) any part of the womb, neck, shank, flank, pole, or cheek of any hide, or into the utter Soal, other than the best of the Ox, or Steer-hide; or into the inner Soal, other than the wombs, neck, pole, or cheek; or in the Trefwels of the double-soaled Shoes, other than the flanks of any of the said hides; or have put to sale in any year between the last of *Septemb.* and 20. of *April*, any Shoes, Boots, Buskins, Startups, Slippers, or Pantofles, meet for any person, above four years old, wherein hath been any dry *English* Leather (other than Calve or Goat-

238 The Charge for Quarter Sessions.

Goat-skins dressed like Spanish Leather.

Gold-smith.

Double value.

3 H. 6. 14.

8 H. 5. 3.

If any Gold-smith or worker of Silver have wrought any Silver that is not so fine in allay as the Sterling; or have not set his mark upon his work before he set it to sale; or if any have gilded any sheaths, or any metals but Silver, saving the Spurs of Knights, and the apparel of a Baron, or such as are above that Estate.

Tyle-maker.

For every hundred of plain tyle five shillings, and every hundred of roof-tyle six shill. eight pence.

7 Ed. 4. 4.

If any Tyle-maker have not digged and cast up his Earth for Tyle till after the first of November, or have not stirred and turned it till after the first day of February following; or if he have wrought it before the first of March following, or if he have not wrought, and tried it from stones, veins, and chalk; or if he have made, or any other put to sale any plain Tyle under ten inches and a half in length, six inches and a quarter in breadth, and half an inch and a quarter in thickness, or any Roof-tyle under thirteen inches in length, and half an inch and half a quarter in thickness, with convenient deepness; or any Gutter-tyle under ten inches and an half in length, with convenient thickness, breadth, and depth.

If any sell Meal in any Shop within twenty miles of London, or within any other place of this Kingdom, but in the publick Market-place usually for that purpose, or sell Meal in any other quality than as it comes from the Mill. If they mix it, or if any use any Bolting Mill or other Instrument in the dressing or sifting any Corn or

Grain

The Charge for Quarter Sessions. 239

Grain, with intent to sell the same in Meal or Flower Ord. 13. Octob. 1650. Treble value, and two moneths imprisonment.

If any Malt be made of Barley but in June, July, and August, to be sold, but what hath 3. weeks time been in the Fat, Floor, steeping, and sufficient drying, and in these moneths seventeen days; and this hath been done within one year last past.

Malters
two shill.
every
quarter.

If any have within a year mingled any Malt not sufficiently made, or made of mow-burnt or spired Barley, with good Malt, and after put the same to sale.

The like
Constable
with the
advise of
one Ju-
stice of
Peace may
sell de-
ceitful
Malt,

If any within a year have sold Malt, till it be sufficiently and well fanned, trodden, and rubbed, so that half a peck or more of dust may come out of a Quarter.

twenty pence a quarter, 2 & 3 H. 6. 10. 27 Eliz. 14. 1 Jac. 25.
22 Jac. 28.

If any have sold or set forth Candles, or other works of Wax to sale.

Chand-
lers.

If any Cloth-maker have not set his Seal of Lead to his Cloth, thereby declaring the just length thereof to be tried by the water. Or have put in any flocks, nails, or thrumbs into any broad Cloth.

Clothiers.
Fine.
Five poun-
by distress,
and for
want com-

mitment, 3 Ed. 6. 2. 21 Jac. 18.

If any have stretched any Cloth above one yard and a half in length, or one quarter of a yard in breadth, or have put to sale any Cloth that have shrunk more in the wetting than is aforesaid. Or have stretched any narrow Streit or Kerfic above one yard

yard in length, and a quarter of a yard in breadth, or have put any such to sale, that have shrunk more in the wetting, or have put in deceivable stuff into the Cloth

Deface
them, sell

them, mo-
neys to
the Poor,

39 Eliz.

20.43.

Dyers of
Cloth 20
shill. no
goods, and
pillory,

39 Eliz. 1.

23. Dyers
of Wooll.

Forty shil.

a cloth, or

wool to

make a

cloth.

Twenty

shillings.

Forty shil.

3 Ed. 6. 2.

If any use any Tenters to stretch their Cloth.

If any Dyer of woollen Cloth have dyed any brown Blues, Pewks, Fawnies, or Violetts, that were not perfectly boiled, grained, or maddered upon the Woad; and shot with good Cork, or Orchal sufficiently, 2 Ed. 6. 2. Or in dying of any Cloth, Woolli, Yarn, Grogerain, Buffins, or Silk, or any thing made of woollen Yarn. Or if any Log-wood, or Block-wood, with other stuff in Dying.

If any person have dyed any Wooll for Cloth, called Russers, Marbles, Grays, Bays, or such like; or for Hats or Caps, unless it were perfectly woaded, boiled, and maddered, or have dyed with Brazil; to the intent to make a false colour in any such Cloth or Wooll: or have put any flocks, chalk, starch, or other deceivable thing upon any Cloth, (except certain Devonshire and Cornwall Streights) For all these Deceits seem punishable by the Common Law.

Iron
cards, &c.

lose them

all, &c.

ten shill.

six shill.

Forty shil.

for every

yard, loss

If any have occupied any Iron Cards, or Picards in rowing of any woollen Cloth: or have sold any Cloth by any less Measure than after the true content thereof, to be met by the yard, every yard being an inch more by the Rule.

If any sell any Cloth being pressed

to

The Charge for Quarter Sessions. 241

to be occupied and worn in the Realm.

If any press any kinde of Cloth with the hot press, or in any deceivable manner, but only with the cold press, 5 & 6 Ed. 6. Or if any use any other deceit in making Cloth contrary to 4 Jac. 2. 21 Jac. 18. or any other Statute.

If any have used any racking, beating, or casting of any deceitful Liquor or other mean, with any kinde of Linnen cloth, whereby the same becomes deceitful.

No Cooper may make any Vessel for Beer or Ale to be sold but according to the Measures appointed, unless he set a mark upon him how much it is.

And they must sell them at such prices as the Justices of the Peace at the Quarter Sessions after Easter shall set down and proclaim.

If Butchers, Fish-mongers, In-holders, Tiplers, Brewers, Bakers, Poulterers, and other Victuallers do not sell at reasonable prices, having respect to the prices they buy.

If any sell Wine in gross or by retail, above the prices set by the Lord Chancellor, Treasurer, and others appointed to set it, and declared by the Kings Proclamation, if any be.

If any Brewer or Victualler take more for their Commodities than the prices the Justices of Peace do set down.

If any In-holder or Hostler take any thing for Litter, or take excessively (that is) more than a reasonable gain, having respect

of cloth or the value, 3 & 4 Ed. 6. 2. 6 H. 8. loss of it or the value of it, 5 & 6 Ed. 6. Linnen cloth, lose cloth, imprisonment. one monet h. Fine. 1 Eliz. 10. Cooper. 23 H. 8. 4. three shil. four pen. for every barrel, kilderkin and firkin, 8 Eliz. 9. Prices. 13 R. 2. 8. 23 Ed. 3. 6. 21 Jac. 22. 5 Eliz. 5. 27 Eliz. 21. 28 H. 8. 14. 37 H. 8. 13. 34 H. 8. 2. 25 H. 8. 2. 13 R. 2. 8. In-holder and Hostler.

1 offence
fine, 2 of-
fence. im-
prison-
ment one
moneth
without
bail, 3 of-
fence pil-
lory with-
out mo-
ney, 4 offence fore-judge of In-keeping, 13 R. 2. 8. 4 H. 4. 22.
21 Jac. 21.

spect to the Markets for Hay, Horse-bread
or any kinde of Provision for Man or Beast.
Or if he living in a great Town or Village
being a through-fare, wherein is a com-
mon Baker, that hath been seven years at
the Occupation dwelling, make his Horse-
bread himself, otherwise he may make
himself; but whoever make it, he must
make it due assize and weight.

Crows.

The increase of Choughs, Crows, and
Rooks, tends to scarcity, and raising of
prices. Every man that hath land in the
countrey, is to do his endeavour to destroy
them. Any man with licence of the Owne-
4 H. 8. 10. of the ground may destroy them, and then
carry them away. If any Occupier of a
mannour, house, or land of five pounds
year value refuse to pay for the taking of
them upon his ground.

Conspira-
cy of Vi-
ctuallers,
&c. 1 of-
fence ten
pound,
2 offence
twenty p.
3 offence
forty po.
2 & 2 Ed.
6. 13.
Ingrossing
commodi-
ties.
Fore-stal-
ling.

To prevent which in Traffick, you are to
inquire, 1. If any Victuallers have con-
spired that they will sell their Commodi-
ties but at certain prices; if it be done by
Corporation or Company, they lose their
liberty.

2. If any man do at once keep above
two thousand Sheep of all sort, contrary
to the Statute of 25 H. 8. 13 for the ge-
tting of so much of one thing into one hand
tender to the enhancing of prices.

3. If any buy or agree for any thing
coming towards a Fair, Market, or great
Town; or moveth the Seller to raise the
price.

price; or doth dissuade him from bringing in the Commodities to be sold in those places, this is *Fore Stalling*.

4 If one buy up Commodities, as Corn, Regrating Wine, Butter, Cheese, Fish, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead Victuals whatsoever, in any Fair or Market, and sell them again there, or in any other place within four miles thereof, this is Regrating.

5. If any get by Buying or Promise-taking, otherwise than by Demise of Land, or Tithe, any Corn or Grain, or dead Victuals into his hands, with intent to sell the same again, this is *Ingrossing*; and these offences are specially named in the Commission.

Ingrossing Salt to sell again, it being no Victuals, but *condimentum*, a Preserver of Victuals, is no offence, but by consequence it may, if one buy up all the Salt with intent to sell it at his own rate, 1 *Crok. Maiward*, ch. 164.

But *Coke* 3 *Instit.* 195. *contr a.*

Malt, hops, and Apples, no Victuals, within the Statute of 5 *Elix.* 6. 14.

And Brewers no Victuallers, within the Statute of 23 *H.* 8.

Fish-mongers, Butchers, &c, that buy things belonging to their Trade are not said to be *Ingrossers*; but if they regrate and sell at unreasonable rates they are within this Statute. *Fens versus B. R. Croke* 229. 1 part.

244 *The Charge for Quarter Sessions.*

An In-keeper may bake Bread to sell in his own house, and 'tis not against the Statute of 5 Eliz. *Web's Case in Sessions.*

But the buying of Barley and Oats (without fore-stalling) to make Malt and Oat-meal. And such Victuallers of all sorts, as Butchers, Fishers, and the like, as buy Victuals without fore-stalling, and sell it again by Retail, according to their Trades. The buying of Provision by In-holders and Victuallers, and of spending it in their houses. The reserving of Rent Corn on a Lease of Land; the buying of Victuals to victual a Ship or Fort; the buying of Seed-corn, when he doth sell or put to sale as much again; nor the transportation of Corn from one Port to another by water; nor the buying of Corn, Fish, Butter, or Cheese, by a Badger, so he sell it within a moneth; Nor the buying and selling of Cattel by Drovers, (licenced, and not abusing their licence) so they sell them forty miles off.

He that is charged upon these Statutes, must be charged within two years after the offence is done.

1 Jac. 22. If any have gotten into his hands, or ingrossed any Oak-bark with intent to sell the same again.

Double value,
5 Ed. 6. 14 any Oxen, Ronts, Steers, Kine, Heifers, Lambs, Sheep, Goats, or Kids living, and sold them again within five weeks.

6 s. 8 pence
a hide,
1 Jac. 20. If any have fore-stalled any Hide, or bought any Hide out of the Market or Fair,

unless

The Charge for Quarter Sessions. 245

unless it be of such as killed Beasts for their own provision.

If any ^{out} of London, Westminster, or Double Southwark, buy to sell again, Butter, or ^{value, 3 &} Cheese, unless he sell it again by Retail, and ^{4 Ed. 6.} then if it be above a Wey of Cheese, or ^{21 Jac. 22.} Barrel of Butter, 21 Jac. 22. ^{Value of the thing sealed.}

If any Farmers selling Butter and Cheese in London, sell and weigh by other Weights, ^{Eight-} than with the Weights sealed according to ^{fold da-} the Standard. ^{mage.}

If any pack up Butter in Firkins for sale, and do not set upon the Firkin when it is ^{thing or} seasoned a visible mark of the weight of ^{value of} the score of the Firkin, or put up less than ^{it, and} fifty six pound of neat Butter in every Fir- ^{three shil.} kin, or less than fourteen pound in each ^{four pen.} Pot, or put up old Butter with new, or ^{5 Eliz. 5.} Whay, or corrupt Butter with Cream ^{21 Jac. 28.} Butter. ^{3 Jac. 11.}

If any transport beyond Sea by any Ves- ^{Transportation,} sel any Fullers Earth, Clay, Tobacco-pipe ^{owner of} Clay, or other Earth or Clay which may be ^{the ship,} used in Fulling here, or any be privy to it, ^{forfeits it,} being owner of the ground, and do not dis- ^{if he do} cover it to a Justice of Peace. ^{know of}

Another thing that furthereth scarcity is ^{it, owner} Transportation. ^{of the}

If any have transported any Corn, Malt, ^{corn loses} Beer, Cheese, or Wood, unto any place be- ^{the value} yond the Seas, except Wheat be at one ^{of it. Ma-} pound twelve shillings the Quarter, Rye at ^{ster and} one pound, Pease and Beans at sixteen shil- ^{Mariners} lings: Barley or Malt at sixteen shillings, ^{lose their} or if he have licence to do it, and exceed it, ^{goods, and} year, ^{imprison-} ^{ment a}

he loseth three times as much, and is to be in Pri on a year.

Weights
and mea-
sures for-
feit and
burn the
weights,
&c Fined
in discre-
tion, above

If any buy or sell by unlawful Weights or Measures, that are not like and equal with the Kings Standard. Or if one use double Weights in buying and selling; the one to buy with, and the other to sell with; and if any unjust Weights and Measures be found, they must be burnt.

fix shillings eight pence for the first offence, for the second thirteen shillings four pence, for the third twenty shillings and pillory, 11 H:7:1. 28 H 8. 14 R:3:11.

The Tun of Wine must be two hundred fifty and two Gallons, the But of Malmsey one hundred twenty and six Gallons, the Pipe one hundred twenty and six Gallons, the Tertian or Poncheon eighty four Gallons, the Hogs-head sixty three Gallons, the Teerce forty one Gallons, the half Hogs-head thirty one Gallons and half, and the Rounlet fifteen Gallons and half. So also of the Measures of Oyl, and none may sell under this in measure, nor till the Vessel be gawged by the Kings Gawger.

Miller.

If any Miller take excessive Toll, he is to have the twentieth, or twenty fourth Grain, according to the strength of the water, and custome of the place, if it be reasonable.

The Millers Toll-dish must be according to the Standard.

For the better understanding of this matter, these things are to be known. 1. That in the principal or Shire-town of every County there ought to be a Standard of

Brass

The Charge for Quarter Sessions. 247

Brass for Weights, and Measures, according to the Standard of the Exchequer, there to remain with the chief Officers of the Town, according to which every City, Burrough, and Market-town in the County, ought to make their common Weights and Measures to be marked by him that keepeth the Standard. 2. In every City, Burrough, and Market-town there ought to be a common Ballance, and a common Bushel, and common Weights sealed, and according to the Standard in the Shire-town. 3. No man within any City or Market-town, ought to buy or sell with any Weights or Measures except they be sealed as aforesaid, nor out of Market-towns, except their Weights and Measures be equal with the Standard, if they must not be sealed, for so some think they must be. 4. Ale and Beer must be sold by one and the same Measure.

If the common Baker, Victualler, Brewer, and Tipler do not keep the Affize of Bread and Beer, according to the price of Corn.

If any by himself or other sell Wares, and buy them again within three moneths at the same price, and know them to be the same; Or take more for any Loan, giving day, than after the rate of ten pound for the hundred.

If any Broker have his hand in such a Bargain.

If any take above six pound per cent. or helps forward in this Contract, if it be un-

Usury,
Treble
value,
Fine,
Imprison-
derment.

248 *The Charge for Quarter Sessions.*

As an Air-der ten pound per cent. it is not punishable,
der in a but the interest is lost.
Premunire,

13 Eliz:23: 37 H:8:9. 12 Car:21.

To this we may add as an Appendix thereto, the offences concerning Labourers, Servants, and Apprentices, without the help of whom, Trades cannot be upheld. And the offences concerning High-ways, which being impassable, it doth much interrupt the free Trade of the Kingdom.

Labourers
and Arti-
ficers.

There are divers Laws concerning Labourers, and Artificers, and therein also of their relations as Masters and Servants, they may be reduced to these Heads: 1. Some are forbidden to intermeddle with some works, wherein they have not been trained up. 2. They may not make combinations amongst them for the limitation of their work. 3. They must do their work truly and fully. 4. They may not depart from their work before it be done. So that the Laws concerning these things have respect to three times: 1. Their coming together. 2. Their continuing together. 3. Their parting asunder. The particulars hereof that you are to be charged with, follow:

Imprison-
ment, two
days and
a night in
the stocks,

5 Eliz:4.
Imprison-
ment till
submission,

If a Justice of Peace require such persons as are fit to work by day at Harvest, for the preserving thereof, and he refuse.

If meet persons required by the Justices of the Peace, to serve as Apprentices, or otherwise to Husbandry, and other Arts, refuse to submit to them.

If

The Charge for Quarter Sessions. 249

If any unmarried woman of twelve years old, and under forty, being required by two Justices, to serve by the year, week, or day, for such wages as they shall think fit, refuse to obey. The like.

If any person married or unmarried under thirty years of age, having been brought up and required of them to serve in the Trades of Cloathing, Wool-weaving, Tuck-Persons compella-
ble to serve.ing, Fulling, Cloath-working, Shearing, Dying, or in the Trades of a Tailor, Shoemaker, Tanner, Pewterer, Baker, Brewer, Glover, Cutler, Smith, Furrier, Currier, Sadler, Spurrier, Turner, Bowyer, Fletcher, Arrow-head-maker, Butcher, Cook, or Miller, and they refuse to obey the order of the Justices of Peace herein, not having forty shillings a year in Lands, or forty pound in Goods, or some Farm in Tillage, nor being retained before by some other person, refuse so to do. Eliz: 4.

If any man take upon him to exercise these Trades, not having been Apprentice to it seven years. Apprentice ten pound.

If any man take an Apprentice contrary to Law, or if any of the Tradesmen before named hire any Servant for less time than one year, or abuse his Servant, or give more wages than the Statutes appoint, or take the Servant coming out of anothers Service, without a Testimonial, or refuse to stand to the order of the Justice of Peace in any matter of difference between him and his Servant, or put away a Servant without a quarters warning, though it be at the end of

Misdemeanour of Master or Servant five pound and imprisonment ten days without Bail five pound.

Ten shillings by distress & sale, 5 Jac 1
6. 5 Eliz: 4

the Term, or will not pay the Wages assessed at *Easter Sessions* by the Justices of Peace.

If any difference be between a Master and his Servant, or Apprentice.

Order.

And if the Justice of Peace give order in it, and the Servant or Apprentice refuse to submit to it.

Commitment till he be bound to serve, Imprisonment

If a Servant promise to serve, and doth not.

Imprisonment one and twenty days.

Imprisonment a year, or other punishment but life or member, they and their receivers to give satisfaction, or be stocked or whipped, 7 Jac; 7.

If the Servant refuse to serve for Wages appointed by the Justices, or do not his work honestly, or promise to do so, and do not; as if my Plough-man drive my Cartel, or ride my Horses to death, or refuse to do his work, or take greater Wages than is appointed by the Statute, or if he make an Assault or Affray upon his Master, or him that hath the oversight of him. If Carders, Weavers, Sorters, or Spinners, imbezzle any Wooll or Yarn.

If Labourers that work day-work, do not so many hours by the day, viz. from *March* to *September* from five to seven, the rest of the year from day-light to day-light. Or if any Artificer or Labourer depart before his Work be finished.

Imprisoned a moneth, and five pound.

Commitment till he serve, unless he were with a Justice of Peace;

If a Servant or Apprentice go away before the end of his Term, without allowance of a Justice of Peace, or depart at the end of his Term, not giving to his Master a Quarters warning, or go away at the end of his time to any other parts without a Testimonial

The Charge for Quarter Sessions. 251

monial of his Maſter. Or if any Artificers or Labourers have conſpired together, that they will not do any work but at ſuch a rate, or for ſuch a time, or in ſuch a manner.

Imprisoned till he get it, which if not done in one and twenty

days, to be puniſhed as a Vagrant, but this is to be intended of the Servants in Huſbandry, and the reſt named before, 2 Ed; 6; 25.

If the Clothier do not pay his Carder, Spinner, or other Labourer in good Money, or if he deliver exceſſive Weights to his work-men, &c. or the Carder, Weaver or Spinner do not his duty in his Trade, or re- fuſe to pay the wages aſſeſſed, 1 Jac. 16.

Clothier, threetimes as much, ſix pence, and commitment till pay-

ment, double recompenſe, and commitment till paid, as by diſtreſs and ſale,

If the High-ways and Bridges be not repaired, and made paſſable, the places whereia they are defective are to be indiſtred.

High-ways. Fine forty ſhillings.

If the Conſtables and Church-wardens do not make Supravifors.

If the Supravifors appointed do not their duty. Or the Pariſhioners with their Men and Ploughs, do not their work appointed. Or the Lord of the Soil do not enlarge the way from Market to Market; ſo that no Buſh, Dike, nor Tree, except great Trees, be within two hundred foot of each ſide thereof. Or the Owners of the Ground adjoining, do not ſcour, cut and cleanſe the Ditches, Trees, and Buſhes adjoining.

Ten ſhillings every day for Plough, twelve pence for a Man, 2 & 3 Pb; & Mar; 8. 5 Eliz; 13. 13 Eliz; 9. 22 H; 8. 5.

Ten ſhillings, and for other grounds adjoining to the grounds ne xt to the high-ways, twelve pence for every Rod.

And

And the High-ways by the Statute of Winchester ought to be forty foot in breadth.

The next thing you shall inquire of, is, of persons of evil name and fame:

Drunkards If any man be a common Drunkard, or a common haunter of Ale-houses, especially if he spend much there, and have little : Or keep a house of common Bawdery ; or usually frequent such lewd places, or the company of lewd persons, or commit Adultery, or Fornication, or have begotten a Bastard-childe, or be the reputed Father of such a Childe, or do before the birth thereof (being accused) convey himself away, or cause the Mother after the birth to convey her self away, and leave the Childe.

Barretor. Or if one be a common Barretor, that is, one that doth commonly stir, or maintain Sutes of Law, or Quarrels in any Courts, or in the Countrey, or be an Evesdropper, that is, one that doth hearken under Windows, or the like, to hear news, and so tell it abroad, to breed debate amongst neighbours ; or if he be a night-walker, that is, one that sleepeth by day, and walketh by night ; or one that doth commonly go in messages for Thieves, or is a common Hedge-breaker, and after he hath been punished for it, doth offend again. All these are persons of ill behaviour.

5 Car:4.

18 Eliz:3.

5 & 6 Ed:
6.13.

You are to inquire of all such as having Licences, do keep any Ale-houses, or Tippling-house, and be bound by Recognizance against the keeping of unlawful Games in their houses, and for the keeping of good order,

order, whether they have done any thing to break their Recognizances.

The loathsome and odious sin of Drunken-Drunkennes, being the root and foundation of many other enormous sins, as Bloud-shed, Stabbing, Murder, Swearing, Fornication, Adultery, and such like, to the great dishonour of God and our Nation, overthrow of many good Arts and Trades, disabling of divers Work men, and general impoverishing of many good Subjects, abusively wasting the good Creatures of God (as the Statute speaks) is a sore evil, and continueth and increaseth still.

You are to take care of the Remedy.

If there be any Inne that is disorderly, Fine or and a common Nuisance, or more than are suppress it needful, to the hurt of ancient and well-upon an grounded Innes.

If there be, 1. Any that sell Ale without Licence. 2. Any that being licenced, sell less than one Quart of the strongest, and two Quarts of the smallest for one Penny. 3. If any that sell by unlawful Measures. 4. If the Ale-man suffer any to sit tipling in his house: And by this it is to be inquired, whether the Ale-house-keeper have forfeited his Recognizance. 5. If any have within six moneths last been drunk. 6. If any have within this time, sit tipling in the Ale-house, having no calling to be there.

for want of distress commitment till payment. Ten shillings to be levied as before. Five shillings within a week to be levied within a week by distress and sale, or for want six hours in the stocks, good behaviour, three shillings four pence to be had as before, in four days, or four hours in the stocks, 1 Jac; 9. 4 Jac; 5. 21 Jac; 7. 4 Car; 5. 7 Ed; 6. 5 For

For the In-keepers offence in some Cases, he is disabled for three years for keeping any Ale-house. For selling without licence, the second offence, the House of Correction a moneth: the third offence, is the House of Correction till he be discharged at Quarter Sessions.

Wine, five
pound a
day, fine.

If any not having the Grant of the King, sell Wine without licence of Justices at Quarter Sessions.

The next Articles are touching such things which concern the strength of the Countrey.

Musters,
forty thil-
lings, im-
prison-
ment ten
days, five
pound, im-
prison-
ment one
moneth,
put out of
his place,
imprison-
ment with-
out Bail
till satis-
faction,
4 & 5 Ph;
& 1 Mar; 4.
1 Ed; 6. 2.
Archery,
33 H; 8. 9.
8 Eliz; 10.
3 Car; 4.

If any commanded to muster before them that have authority, have absented themselves without cause, or have not brought their best Furniture and Arms to the Muster; or if any authorized to muster, have taken a Reward to spare any; or if any that hath the charge to do it, doth not pay his Souldiers wages, Conduct or Coat-money. Or if any Captain for gain licence his Souldiers to depart, or demand, or take more money than his due; or if any do willingly purloin; or do away any Horse or Harness delivered to him, or wherewith he was set forth, and cannot shew how he did lose it.

The use of shooting in the long Bowe, (said to be in the Statute of 33 H. 8. 6. the surety, safeguard, and continual defence of this Realm, and an inestimable dread and terrour to the Enemies of the same) is to be enforced. You are therefore to see that the Bowyer out of London, Westminster, and

South-

The Charge for Quarter Sessions. 255

Southwark, that makes a Bowe of Ewe, must make four of other wood.

That every one have Bowes and Arrows according to the Statute of 33 H. 8. 9. That is, every one from seven to seventeen, his Bowe and two Arrows; and from seventeen to sixty years old, his Bowe and four Arrows.

Six shillings eight pence every moneth in default. Masters and Parents to pay for Children and Servants. Imprisonment till fine.

That they do use them, and exercise themselves and their Children in Shooting. That one under four and twenty years old, that doth not shoot at a standing prick, or being above that doth not shoot at any mark under two hundred and twenty yards with any Prick-shaft or Flight.

That no stranger use this exercise, or convey away these Weapons without the Kings licence, 33 H. 8. 9.

And to see that every Tything have their Butts, and to present the defaults. And the better to hold them to this exercise, to restrain them from other exercises which are prohibited, You are therefore to inquire,

Buts twenty shillings a moneth.

If any one keep in his house, or carry any Hand-gun, nor a yard in the Stock and Gun, or any Hag-bur, or Demi-hawk, nor three quarters of a yard in the Stock and Gun; or (not having in his Wives or his own right an hundred pounds a year) carry or have in his journey any Cross-bow bent, or Hand-gun, or Hag-bur, or Demi-hawk charged with Powder, &c. except in time of War, or by himself or Servant shoors in such a Gun at any thing but a Bank,

Gun, ten pound to be estreated in the Exchequer Imprisonment till payment.

256 *The Charge for Quarter Sessions.*

Bank, or for defence of himself or his house within, or within a quarter of a mile of a City, or a Market-town, unless it be one licensed to kill Hawks mear; or, within five miles of the Sea.

Ten pound Or if any under the degree of a Lord of
33 H. 8. 6. the Parliament, shoot in any Hand-gun,
2 & 3 Ed. within any City or Town, at any Fowl or
6. 14. other mark, upon any Church, house, or
34 Eliz. 19 Dove-cote, or any other place, with any
1 Jac. 27. Hail-shot, or more Pellets than one at one
time, or at any Pheasants, Partridges, &c.
And yet publick Officers for the execution
of Justice, may carry and use Guns.

Concerning matters of pleasure.

If any Lay-man that hath not forty shillings a year in Lands, keep Hounds, and use Hunting, 13 R. 2. 13.

Hawking, If any one have hawked or hunted with
hunting, his Spaniels in any other mans grounds
killing of where any eared or coddled Corn hath been
Hares, standing or growing, before it hath been
Pheasants, put in Shocks, without the consent of the
and the Owner of the Ground: or hawk between
like forty the first of July and last of August, or (not
shillings, having ten pounds in his own or Wives
commit- right in Fee, or thirty pound a year for Life
ment, three above all charges, or two hundred pound
moneths, in Goods; or not being the Son of a Knight,
or pay forty or greater person, or Son and Heir of an
ty shillings Esquire) have kept a Grey-hound, or Set-
for every ting-dog; or have with any Gun, Bowe, or
hawking, Net, or otherwise, killed or taken Pheasant,
and ten Partridge, Huse-dove, Pigeon, Hearn, Mal-
shillings lard, Duck, Wigeon, Growth, Heath-cock,
a Pheasant or a Par-
tridge,
7 Jac. 11.

The Charge for Quarter Sessions. 257

or any such Fowl, or kill or take Hare with Hare-pipes or other wise, or kill or trace any Hare in the Snow, or kill any Partridge, or Pheasant, between *July 1. and August 31.* or take or spoil out of or in the Nest, the Eggs of any Pheasant, Partridge, Swan, or wilde fowl used to be eaten, but he that hath forty pound in Fee, or Free-hold, or fourscore pound in Lease, or is worth in Goods four hundred pound: or his Servants may take Pheasants or Partridges in the day-time in his own Grounds between *Michaelmas and Christmas.*

Imprisonment till forty shillings paid, *1 Jac. 27.*
Imprisonment till twenty shillings be paid, for Pheasant ten shillings, for Partridge five, be bound not to do.

so again. Commitment three moneths, unless he pay the money forthwith to the Church-wardens. Or after one moneths commitment to give the Recognizance of twenty pound not to do so again. Imprisonment two moneths, Treble damages, good behaviour, seven years surety for it. *1 Jac. 27. 7 Jac. 17. 23 Eliz. 10. 25 H. 8. 11, 14 H. 8. 10. 11 H. 7. 17. 5 Eliz. 21.*

If any destroy the head of a Pond, and take away the Fish, or hunt in any Warren, or Park inclosed: and take away or spoil the Game, or take away Hawks or their Eggs.

If any use any Guns, or Bows, or kill Deer or Conies, or keep Hays and Purse-nets, Ferrets, or Cony-dogs, unless he have forty pound inheritance *per annum*, or is worth two hundred pound in Goods, or have Warren and Ground inclosed, the profit whereof is worth forty pound *per annum*. But he that hath an hundred pound a year, may keep them for his own use.

If any for his private gain, keep a house or place of unlawful Games, as Bowls, Games
Coits,

Unlawful Games

258 The Charge for Quarter Sessions.

forty shil- Coits, Cloish, Kails, half-bowls, Tennis,
lings a day Dicing. Tables, Carding, Logate, Shove,
12 R. 2. 6. goat, casting the Stone, Kails, Hand-ball,
11 H. 4. 4. Foot ball, Clash, Quick-board, or any other
17 Ed. 3. 4. unlawful Game now invented, or hereafter
32 H. 8. 9. to be invented, Bear-baiting, Bull-baiting,
Stage-plays, 1 Car. 1.

Six shil-
lings eight
pence a
time.

If any use or haunt such a house, and there playeth at any one of these Games. Some think all Games, except Shooting, are unlawfull.

Ten shil-
lings a
time.

If any Artificers, Crafts-man of any Handy-craft, Husband-men, Labourers, Mariners, Fisher-men, Water-men, Apprentices, Servant at Husbandry, Journey-men, or Servant of Artificer, Mariners, Fisher-men, or Water-men, or any Serving-man, play in any place at any such Game, out of Christmas onely, and in their houses, or Servants in their Masters houses, and by their Masters licence, or Serving-men, within the precincts of their Masters house, and by their Masters licence.

Six shil-
lings eight
pence a
time.

If any person play at Bowls in an open place out of his Garden or Orchard.

Any Justice of Peace may enter into the places they suspect to keep such houses, or where men play at such Games; and finding it, may imprison the Keeper of the place till he give Surety no longer so to do: and he may imprison the Gamesters without Bail, till they be bound in such sum as he shall think fit, not to play again.

Poor.

The Articles concerning the Poor follow.
The Poor are to be provided for. And for this

this you are to inquire, if the Over-seers and Church-wardens do their duty in taking care for them, according to the Statute of 43 Eliz. 2. And if Parents or Children that are able, do relieve their impotent Parents or Children, according to the Justices of Peace Order at the Quarter Sessions.

If any run away and leave their charge upon the Parish, or threaten so to do.

If any refuse Apprentices being put upon them by the Over-seers, Church-wardens, and Justices of Peace.

To be punished as incorrigible Rogues to be sent to Bridewell till security,

To this Head we may reduce the Law against Cottages and In-mates, being made for the prevention of the increase of the Poor.

to save the Parish, 7 Jac. 4.

If any build up any new house, or convert any old house, not before a dwelling house, to a Cottage, and do not lay four Acres of Land near adjoining to it, to be perpetually used with it: or if any do continue such an unlawful house so built, for one moneth: but Cottages in Market-towns, or about Mines or Quarries, or where Brick or Tyle is made, not being above a mile from the works, and used to that end: or for a common Herds-man, or Keeper, or Shepherd, or built by the Order of Sessions, are not forbidden. The building or conversion must be after this Statute. But if an ancient Cottage wholly be decayed and re-edified, this is the offence.

Cottage ten pound erecting, forty shillings continuing.

31 Eliz. 7.

If any take in any In-mate more than one In-mates,
A a household

ten shil-
lings.

household into a Cottage: or if any do continue such an In-mate for one moneth. But such as are so placed by Order of Sessions, with leave of the Lord, and by the charge of the Parish, are not forbidden by the Statute. Herein know, No man is to be accounted an In-mate, or Under-fitter, but he that is in a Cottage. 2. Such Cottages as were before the Statute, as well as those which are after; and such as have four Acres annexed, as well as those which have not, are within this Statute. 3. In mates within Cities and Burroughs are within this Statute also, as well as others, *Cook, 2 part. Inst. 739.*

The next thing concerneth the preservation and breed of things.

If any feeding for the most part of the year above one hundred and twenty shear-sheep on his grounds, that are meet for milch Kine, and wherein no person hath any Common, have not for each sixty such sheep, reared one Calf during the time of his keeping the sheep; or if he feeding on his several Pastures above twenty Oxen, Routs, Steers, Skruks, Heifers, or Kine, have not for every such ten beasts kept one milch Cow; and for every two Kine rear'd up and weaned yearly one Calf, except it chance to dy. But this Law is not to be extended to the Catgel a man doth spend in his own house. Or one keep stoned Horses upon Commons of two years old, and not fourteen handfuls high; and any Horse that is so, any man may seiz and have, after
he

31 *Eliz. 7.*
Calves,
twenty
shillings a
moneth
for every
Cow or
Calf,
2 & 3 *Pb.*
& *Mar.*
325. For-
feit the
Horse,
32 *H. 3. 13*
8 *Eliz. 8.*

he hath called the Constable and three of the Neighbours to measure him. But if a Horse be broken in, or it be a place where no Mares are kept, this is not punishable.

If any between the Nativity of the Virgin and St. Martin, rake any Salmon in any River, or take young Salmon in any River between *Septemb. 8.* and *Novemb. 11.* or at Mill-pools between the midst of *April* and *Mid-summer*: or have taken or destroyed any Fry of Fish in any Water, or have taken any Fish out of season (that is) being Keepers or Sheddors: or taken any Pickerel under ten, Salmon under sixteen, Trout under eight, or Barbel under twelve inches: or have taken Fish in any Water with a Net, whereof every Mesh is not two inches and an half broad, within five miles of the Sea, with a Draw-net not an inch and half from knot to knot.

For this time is given to the Leet to punish it. Forfeit the Net, and ten shillings levied by distress and sale, 17 R. 2. 9. *Westm.* 243. 1 *Eliz.* 7. 14 *Eliz.* 11. 1 *Jac.* 25. 3 *Jac.* 12. 3 *Car.* 4.

But the taking of Fish by angling: or the taking of Smelts, Loches, Minnows, Bin-heads, Gugeons, or Eels, where they have been used to be taken, is not prohibited by any Law.

If any Flesh be dressed, or killed in a common victualling-house in Lent, within one year last past.

If men without licence eat Flesh on the days appointed for Fish (whereof

imprisonment with-
out bail,
twelve
shillings
four pen.
1 *Jac.* 39.
3 *Car.* 4.
2 *Eliz.* 52.
7 *Eliz.* 7.

Wednesdays none) within one year last past.

If any in whose house it is eaten doth not disclose it to him that hath power to punish it.

There are certain effences and certain Laws that do make them so, which because we do not finde they do at all belong to the Consuance of this Court, albeit some of them have been usuallly given in Charge, there we do purposely pass over; of this sort are the Statutes of Maintenance and Champerty 32 *H.8.9.* of Sheriffs, 1 *Ed.* 4.2. 4 *Ed.* 3.10 of the Clerk of the Market, 13 *R.2.4.* of Coopers, 23 *H.8.4.* 31 *Eliz.* 8. of woollen Yarn, 7 *Ed.* 4.3. of Cloth, 43 *Eliz.* 10. 27 *H.8.* 12. of Servants wasting their dead Masters Goods, 33 *H.6.1.* 4 *Jac.* 2. of Bowes, 12 *Ed.* 4.2. 1 *R.* 3.13. for selling of Cattell, 3 & 4 *Ed.* 6.19. of bringing in forreign Wares, 5 *Eliz.* 7. of prices of Bowes, 8 *Eliz.* 10. of forging of Deeds, 5 *Eliz.* 14. And some others.

The last thing we shall minde you of, is touching Presentments, that in those you make, you do set down a certainty of the persons presented, with the time and place, and manner of the fact. otherwise let the matter be what it will for which you do present any man, your Presentment may become void, and of little or no effect, for defect in the manner of making it, and setting it down, will make it void.

CHAP. VIII.

Of their Proceeding in these Courts.

THe manner and order of Proceeding in the General Quarter Sessions, and in a special and particular Sessions, is for the most part one, and in most Cases after one way, for their power by the commission is alike in all offences by the Common Law; but their power by Acts of Parliament is after a divers manner: for some Statutes run thus; That they shall inquire onely; See 23 *Eliz.* 1, 3. 1 *Eliz.* 23. 5 *Eliz.* 1. 13 *Eliz.* 3. Touching offences about the service of God, coming to Church, or establishment of Religion, and others. But note that a private Sessions cannot be held for the whole Countie.

The manner and order of proceeding in these Courts for the convicting and punishing of offenders.

Church.

Some that they shall inquire and punish.

Some that they shall inquire and determine, 2 *H.* 6. 14. About Wines, 8 *H.* 5. 3. About gilding and the fineness of Silver.

Wines.

Gilding.

Some that they shall hear and determine; and others inquire, hear and determine, which are all one. So 2 & 3 *Phil.* & *Mar.* 3. About milch Kine, 36 *Eliz.* 4. About Rogues, 2 & 3 *Phil.* & *Mar.* 7. 31 *Eliz.* 12. About Horses sold and toll'd in Fairs, 5 *Eliz.* 21. About fishing and hunting in a Park, 27 *Eliz.* 12. About Under-sheriffs and their Officers, 1 *Eliz.* 17. About the destroying of the breed of Fish, 2 & 3 *Ed.* 6. 15. About the conspiracy of Victuallers, &c.

Milch kine, rogues, horses, fishing, officers, breed of fish, conspiracy of Victuallers.

perjury, 5 *Eliz.* 9. About Perjury, 1 *Jac.* 22. About
 tanners, Tanners, &c. 27 *Eliz.* 7. About return of
 return of Jurors, Jurors, 23 *Eliz.* 10. About Pheasants, 3
 pheasants, *Eliz.* 3. About transportation of Sheep,
 transportation, 20 *H.* 6. 19. About Souldiers, 33 *H.* 9. 9.
 souldiers, About Archery, 23 *H.* 6. 10. About Sheriffs,
 archery, 13 *Ric.* 2. 8. About Victuallers, 1 *Hen.* 8. 7.
 sheriffs, About Coroners, 11 *H.* 7. 8. About Weights,
 victual- 28 *H.* 1. 14. About Wine, 1 & 2 *Phil.* &
 lers, co- *Mar.* 3. About Transportation of Corn and
 roners, Provision
 weights,
 wine, transportation.

Ingrossers,
 Malt.
 Fish.

Some be that they shall hear and deter-
 mine by Inquisition, Presentment, Bill, or
 Information before them, and Examination
 of two lawful Witnesses, or by any of
 these ways, according to their discretion,
 &c. So are 5 & 6 *Ed.* 6. 14. 5 *Eliz.* 12.
 About Ingrossers. To this effect is, 2 & 3
Ed. 6. 10. About Malt, 5 *Eliz.* 5. About
 Fish.

Wines.

Some run thus, That they shall examine,
 hear and determine every such default [or
 every such Forfeiture] upon Presentment
 thereof had before them in the Sessions, &c.
 So 12 *Ed.* 4. 9. About an Escheator. And to
 punish the Offender by Imprisonment, or
 otherwise, according to their discretion, &c.
 So is 28 *H.* 8. 14. About Wines.

Tanners.

Some that they shall hear and determine,
 &c. And also by their discretion examine
 all persons suspect to offend against this Act,
 1 *Jac.* 22. About Tanners.

Some thus, That they shall hear and de-
 termine

termine by their discretion, as well by Examination as otherwise, the defaults, &c.

So is 17 *Ed* 4.4. About making of Tyle. Tyle.

Some that they shall by Examination or Inquiry hear and determine, and set Fine according to their discretion, &c. So 11 *H.* 7.4 About Weights.

Weights.

Or thus, shall inquire and determine as well by Presentment as Examination, 1 *H.* 8.7.

Or thus, That Justices and Stewards of Leets shall inquire, and the Presentment in the Leet shall be certified to the next Quarter Sessions. And the Justices shall hear and determine every such Presentment before themselves or Steward by Examination or otherwise, 33 *H.* 8.13. About stoned Horses.

Stone-horses.

Others thus, That they being convicted by Witnesses, or Confession taken before the Justices of Peace in their General Sessions, shall suffer any corporal punishment but Death, as they shall appoint. And that they shall call by Process or otherwise to Sessions the persons suspect, or commit them to Ward, or upon Bail till the next Sessions. So is 33 *H.* 8.1. About false Tokens.

Tokens.

Others thus, That the Justices of Peace they may attend, survey the offences against this Statute; and if they finde any, shall make due punishment thereof according to the contents of this Statute. So is 17 *R.* 2.9. About Salmons.

Salmons.

Others thus, upon pain to be grievously punished, according to the Justices discretion,

tion, they shall judge them to the same bodily punishment as the offence requireth. And shall do execution thereof, 13 R. 2.8.

Sheriffs.

Others thus, That they upon the party grieved his Complaint, shall make out Process to the Sheriff, &c. as in an Action of Trespas, to appear before them to answer the matter. See 11 H. 7. 15. About Sheriff.

Others thus, That they shall at their Sessions indict and try the offenders by the usual course of Trials and Indictments in like Cases. See 39 Eliz. 11.

Others thus, That the Sheriff shall certify all Indictments taken before him, in his turn, to the Justices of the Peace. And they shall proceed as if they were taken before themselves, &c.

Or thus, That the Justices shall charge them that appear before them, that they duly inquire and put in execution the effect of the premises in due time, so that this act may be fully executed, 24 H. 8. 10.

Woollen
yarn.

Others thus, That they shall examine the Trespassers in this Case, and do execution of them that be found faulty by Inquest, or by Examination to be made by the Judges in manner aforesaid. See 8 H. 6. 5. About woollen Yarn.

Wines.

Others thus, That they in their Sessions may inquire by the Oath of two men of those offences, and their Presentment shall be of the same force, as those in the Kings Bench are. See 7 Ed. 6. 5. About Wines.

Others thus, That these offences be inquired, and presented before the Justices of Peace,

Peace, in their Quarter Sessions, and thereupon such due proceeding shall be against the offender, as in such Cases, by the Laws of the Realm, is used, 4 *Jac.* 5. About Drunkenness.

Drunkenness.

Others thus, That the Justices in their Quarter Sessions, or any two or more out of the Sessions, shall hear, punish and determine. See 1 *Jac.* 27. About Pheasants.

Pheasants.

Others thus, That they shall inquire by Oath of twelve men, or by Information; and make such like Process upon Presentment, or Information, as they use to do upon Presentment of Trespass, 25 *H.* 8. 12. About keeping Sheep.

Sheep.

Some thus, for Felonies, That the Justices having power to determine Felonies, shall hear such offences, and execute the offender. Or thus, They shall be punished as other Felons, or suffer Death as other Felons by the Law, 39 *Eliz.* 17. 8 *Eliz.* 3. 1 & 2 *Phil.* & *Mar.* 4. 21 *H.* 8. 1 *Jac.* 31.

For the opening of which, these Rules must be taken notice of.

Inquisition, See above, *chap.* 5.

1. One Justice of Peace cannot take an Inquisition of a Statute, unless the Statute doth especially enable him to it, as in Case of a Forcible Entry, &c.

Forcible Entry.

2. Where the Statute giveth power to examine onely, it seemeth this includeth Oyer and Terminer. And though it say not what person it shall examine, yet it seems they may examine Parties as well as Witnesses. See *Dalt.* *J. P.* 191. But *quære.*

Examine.

3. Where a Statute doth enable the Justices

Justices

Inquiry.

Justices onely to inquire, there in some Cases they are to take an Inquiry, and certify it to some higher Court, as in case of some great offences, as in 1 *Eliz.* 2. 3. and others.

Oyer and
Terminer.

4. Where the Statute doth enable them to hear and determine an offence, this doth comprehend all the necessary ways and means of doing of it; as Information, Hearing, Presentment, granting Process, giving Judgement and Execution; and therefore that the addition of these things are superfluous, and this is the largest power of all. But in this Case it is held, it must be in one of their Sessions, and in the ordinary way of Trial, and that the Justices cannot do it out of the Sessions, *Dalt. J. P. fol. 39.*

Sessions.

Witnesses

5. Where the matter is to be tried by Witnesses onely, there it seems two Witnesses are requisite; but if it be tried by Jury, there one Witness will serve, and sometimes none, *Plow. 12.*

Trial by
examina-
tion or
witnesses.

6. The Trial by Examination of Offenders, or Witnesses alone without a Jury, is not permitted to Justices of Peace, but in case where the Statute doth either in general refer the Trial to their discretion, or else they are especially enabled to take Examinations, otherwise it must be by Jury.

Proof.

7. Where a Statute speaks of Proof, it shall be taken for Proof by Witnesses onely, yet some say by a Jury, *Dalt. J. P. fol. 191. Young in his Pracognita.*

8. Where the Statute doth enable Justices

ces

ces to a Trial according to their discretion, there it seems they may take the Examination of Witnesses upon Oath, *Dalt. J. P. Oath. 120. 16. Young* in his *Præcognita* to his Book, *Dalt. J. P. 191. Lamb. 535, 536.*

9. Where the Statute doth not direct the way of Trial, there it must be by the ordinary way of Indictment, according to the Common Law, *Dalt. J. P. 193. 73. Young.* Trial, Indictment.

10. That which may be tried another way out of the Sessions, the Justices may try by Indictment in the Sessions at their choice. Sessions.

11. When the Statute speaks of Examination of Witnesses, or other Accusation or Proof, though it say not upon Oath, yet it seems it must be so, *Dalt. J. P. 192.* Oath.

12. Where a Statute speaks of Witnesses, it cannot be with less than two, unless the Trial be by Jury, where it may be one will serve, *Dalt. J. P. 192.* Witnesses.

CHAP. IX.

BUt the whole Proceeding in an ordinary way lieth in three things. 1. In Information. 2. In Hearing or Trial. 3. In giving Judgement, and doing Execution.

C H A P. X.

Of Information.

Present-
ment.

AS to the matter of Information, these things are to be known.

Certifi-
cate.
A Present-
ment,

1. That the Judges of these Courts take knowledge of offences many ways. As,
1. Either by the Presentment of some publick Officer, Steward of a Leet, Supravisor of High-ways, Constable, or the like. 2. Or by the Presentment of the Jury. 3. Or by their own view. 4. Or by the Information of private persons, so is the common Informer. As to the first of these, these things must be known: 1. A Steward is to certifie to the Justices of Peace the defects of Stone-horses that go in Commons upon 32 *H.8.* 13. A Sheriff, the Indictment found before him. A Searcher of Tyle, defects of Tyle-making, upon 17 *Ed.* 4. A Constable to certifie the defects of Execution upon the Statute of *Winchester*, chap 13.

Constables, Church-wardens, Head-boroughs, Tithing-men, and Ale-cunners, must present upon their Oaths all Offenders by Drunkenness or tipling within 4 *Jac.* 5. 2. These are not sent to the Grand Jury to be found by them as Indictments prepared are, but are a perfect Information of themselves, to which the party accused must answer.

For the second, these things must be known.

1. The

1. The Information given by the Jury is two ways, by Indictment or Presentment; how these agree and differ, and many other things of this subject. See in *Lib. 2.*

2. That the Justices are to receive in this such Indictments as are within their Conscience, and none others 3. They must *ex officio*, see that they be well drawn for matter and form.

For the third, these things must be known: 1. A Justice of Peace of his own view may present the defaults of the Highways.

For the fourth, these things, 1. That any man may inform or give in evidence against these Offenders without any danger at all.

And touching the common Informer, these things must be known: 1. None are to use this but such as are allowed upon Record. 2. That none is to be admitted to this Office, that hath been once turned out of the same by the Court. 3. They may not inform against any man for an offence done beyond the time limited in the Statute of 31 *Eliz.* 4. He may not inform in any of the Courts of *Westminster*, but must bring his Information in the County where the offence was done. If the Statute upon which that Information is grounded give the Justices of Peace power, but not otherwise. Such Informations as might have been brought before the Justices of Peace or at *Westminster* at election of the Informer must now by this Statute be brought at

at Assizes or Sessions. *Vide antea cap. 5.* And for this purpose, before his Information be received and recorded, he must take his Oath before the Justices of Peace, that the offence was not done in any other County, and that it was done within a year of the time wherein the Information is laid. And this Oath must be entered of Record, 21 *Jas. 4.*

C H A P. XI.

Of Process, Hearing, and Trial.

FOR the second thing, Hearing and Trial: In this are included these things: 1. The calling in of the party. 2. His Appearance and Defence.

Process.

For the first, there are Processes to bring in the party in case he stand out, and come not in to answer the Accusation. And these Processes are, 1. In Case of Indictment, or otherwise; upon Indictments of Treason or Felony, the Processes are, 1. A *Capias*. 2. An *Alias Capias*. 3. An *Exigi facias*. Upon Indictments for other offences, not being Felony, they are, 1. A *Venire facias*: And if thereupon the party be returned sufficient, then 2. A *Distingas*, and then Process Infinite till he come in. But if a *Nihil habet* be returned at first against him, then 2. A *Capias*. 3. An *Alias Capias*. 4. A *Pluries Capias*. 5. An *Exigi facias*; *Young fol. 133.* The Process upon

on any Indictment or Presentment for an offence against a Statute, shall be such as the Statute doth direct, if it direct any, otherwise the ordinary Process of the Common Law, *Trin. 9 Jac.* If one be indited for Recusancy the Court may proceed by Process upon Statute of 23 *Eliz.* viz. by *Venire Facias, Capias, &c.* *Cook 12. Rep. 131.*

And if one be outlawed before Justices of Peace or Justices of Assizes; upon an Indictment of Felony they may award a *Capias Utlegat.* for they that have power to award Process of Outlary have also power to award a *Capias Utlegat.* as incident to their Authority and Jurisdiction. See Statute 34 *H. 8. cap. 14* 1 *Ed. 6. cap. 1.*

Justices of Peace in case of Profanation of the Sacrament shall award a *Capias Utlegat.* throughout all *England*, *Cook 12. Rep. p. 103*

There are other Processes, as that by which the Sessions is called, *Fieri facias*, and *Capias* after Judgement for the doing of Execution, 5 & 6 *Ed. 6. 14.* And in some special Cases *Elegit.* See 31 *Eliz. 7.*

If one living in one County be indited in another, the first Process must go into the County where the party is indited, and the next into the County where he dwells: vide Statute 5. 6 *E. 6. 14.*

And if a man be wounded in one County and after dy thereof in another County, he shall be tried in the County where he died, for there the Felony is committed. 2 & 3 *Ed. 6. 24.*

But

But touching all Process, these Rules must be heeded: 1. No Process do usually issue forth of this Court, but upon the Inquisition of twelve men, or Return of a sworn Officer, some special Cases excepted. 2. They are not granted upon a bare suggestion, by word or writing. 3. Nor can any Process issue forth but *Sedente Curia*. *Lamb chap. 6. 5 Eliz 12. 3 Ed. 6. 14.* Sometimes he comes into the Sessions by Recognizance, being thereby bound to appear there. For all Recognizances that concern the Sessions, are to be certified to the next Quarter Sessions after they are taken, when and where the party is to be called upon them. And if he do appear, his Appearance is to be recorded. And the same, or his default of Appearance in case he do not appear, is to be certified, 3 *H. 17. 1. 5 & 6 Ed. 6. 15. Lamb J. P. 389.*

Recogni-
zance.

Certifi-
cate.

Appear-
ance.

Recogni-
zance.

Process.

Certifi-
cate.

For if a Recognizance be forfeit by default of Appearance, or by breach of the condition, the Justices of Peace cannot award any Process upon it, but must certify the Recognizance and the cause of Forfeiture into some of the Courts of Record at *Westminster*, to the end that some Process may issue out from thence. *Dalt. Just. P. 213.*

Supersedeas

The party bound shall do well if he have a *Supersedeas* from above to discharge him, to appear with it at the Sessions, and pray an allowance of it; for it is doubted, whether his sending of it be a Discharge of his Appearance, *Dalt. J. P. 173. Lamb J. P. 113.*

If one be bound to appear at the Quarter Sessions, he must appear there: If it be at the Sessions, he may appear at any Sessions, *Dalt. J. P. 237.* Appear-
ances
Discharge.

And if a Certiorari come to remove the Recognizance in Chancery, or Kings Bench before the day, this will discharge the Appearance, *Dalt. J. P. 237.* Certiorari

When the party doth come in, he must after his Appearance, make his Defence, either he must confess and submit to the Fine, or traverse the charge; and then he is bound to prosecute it, unless it be tried presently, which must be done by a Petit Jury, and this called an Arreignment, or Trial. Confession
Traverse.

Arreign-
ment.
And if they pass for the King, and find him guilty of the offence, or he confesseth it, or stand out an Outlawry that he be convicted, then are the Justices to give Judgement, and see Execution done according to Law. Conviction.

C H A P. XII.

Of Judgement and Execution.

FOR the third thing, giving Judgement and doing Execution.

In the giving of Judgement and doing Execution, these things are to be known: Judgement

1. They must adjudge men according to the Law, that is, where the Law appointeth a corporal punishment, they may not inflict a pecuniary punishment. *Et sic è converse.*

verso. And regularly where the Law appointeth one kinde of corporal punishment, or one degree of pecuniary punishment, they may not change it, and inflict another.

Punishment.

2. They have power to inflict corporal punishment, as death, cutting off the parts of the body, burning or marking, imprisoning, whipping, or stocking, or cucking-stool.

3. Pecuniary, as loss of Offices, Lands or Goods, Fines, Issues, Amercements.

4. In fame, as to brand a man that is perjured, that his Testimonial shall be of no credit afterwards.

CHAP. XIII.

Of Fines and Amercements.

Fines and Amercements.

Touching Fines and Amercements these things are to be taken notice of :

1. That no Fine or Amercement can be set but *Sedente Curia*.

2. All Fines and Amercements that are in their discretion, must be reasonable, having regard to the offence, 34 Ed.3.1. & *salvo contentimento*.

3. Where a Statute doth appoint a certain penalty for an offence, there regularly no other can be imposed, nor can the Justices of Peace mitigate it after the party is convicted by confession, or otherwise. But if the party indicted before his conviction come into the Court, and protest his innocence,

gency, yet, *quia noluit placitare eum An. Re-*
ge, he puts himself to the grace of the
Court, the Court may impose a moderate
Fine, and by order forbear the prosecution.
And the common practise (it seems) is, that
if an Information or Indictment be against
a man for Drunkenness, Tipling, selling Ale
without licence, Swearing, driving Cattel
on the Sabbath-day, or any other offence
against a Law that gives an express penal-
ty, if the offender come in and confess it,
and put himself upon the mercy of the
Court, they do fine at their discretion: But
if he be convict by Verdict, or Oath of Wit-
nesses, the Justices of Peace cannot dis-
charge him of any part of the Forfeiture.
And therefore if a man be convict so for sel-
ling an hundred Measures of Beer under
Measure, he must pay all the penalty. *Re-*
solved of the Judges. temp. Car. R. 10.

4. The party is to be imprisoned till he Imprison:
pay his Fine, if it be a Fine at Common ed:
Law: For to every such Fine, Imprison-
ment is incident; yet in this case the Justi-
ces may take a Recognizance for payment
of it, and deliver the party out of Prison.
Or they may cause the Clerk of the Peace Clerk of
to make Estreats of all the Fines and A- the Peace.
mercements, and transact them into the Estreats.
Exchequer by Indenture, keeping one part
to themselves, 5 *Elix. 4. Sed quare whether*
now they may not require the Sheriff to
levy them, 14 R. 2. 11. By which they are
to have Duplicates indented of the Estreats,

and the Sheriff is to have one part to levy the Fines, &c. by them.

CHAP. XIV.

Of an Indictment and Presentment.

Present-
ment what.

AN Indictment is a Bill or Declaration formally made, containing an Accusation of a man for some offence committed, by a Jury to be found of purpose to put the Offender to answer to it. Or it is the Verdict of the Jurors, grounded upon the Accusation of a third person, the which the Jurors are charged to inquire of. Or it is an Accusation found by an Inquest of men upon their Oaths. And this sometimes is called a Presentment, which differs little from that, being defined to be an Inquiry finding some offence against the Common-wealth. Or a meer information or denunciation of the Jurors themselves, or of some other Officers, without the accusation or information of another to the Justices that have power to punish the offence done contrary to the Law, *Cook super Lit.* 126, 127. *Stamford, Lamb.* 485.

An Indirement is drawn and ingrossed in Parchment in form of Law, and delivered to the Jurors to be inquired of.

A Presentment is properly that which the Jurors find and present to the Court void of form, but is after reduced to form.

Of an Indictment and Presentment. 279

form'd Inditement, *Cook 2 Inst. fol. 739.*

An Information is the Accusation of the Informant party offending by a stranger before the Justices of the Peace, for the King, or for his own benefit, to the intent to put the party to answer.

Appeal is the Complaint of one man against another, of purpose to attain him of some what offence.

The Indictment or Presentment, is the chief ground-work whereupon the whole Trial is afterwards to be built.

In every Crime seven things are to be considered, *viz.* the cause, person, place, time, quality, quantity, and event.

Every Indictment, Presentment, &c. (2.) (especially if it concern a mans life) being in the nature of a Declaration for the King against the offender, to which the party must answer, and upon which the Court must judge, must contain verity, certainty, and perspicuity, certain ought the Declaration to be, certain the foundation, certain the matter which is brought into judgement. For an Indictment cannot be made good by implication. *Stamf. 96.*

The Rule of Law is, that Indictments ought to be certain: But there are three manner of certainties, 1. To common intent. 2. A certain intent in general. 3. A certain intent in every particular. The first intent sufficeth in Bars which are to defend the party and excuse him: the second is required in Indictments counts Replications, &c. for that they are to excuse or

280 Of Indictments and Presentments

charge the party. The third manner of certainty is rejected in Law; for *Nimia subtilitas in jure reprobatur, & talis cecritudo cecritudinem confundit.* Cook 5 Rep. Long, &c. f. 121.

(3)

Wherein an Indictment, Presentment or Information shall be said to be good or not,

The Indictment is to prepare for a Trial. For the Trial it self is the Issue upon the Indictment.

Many things are requisite to make a good Indictment, Presentment, or Information.

1. As that the party indicting, &c. be competent. 2. That the Indictment be brought in due time. 3. That the matter be indictable. 4. That the Indictment be for manner and matter substantial. And if it be defective in any of these particulars, it may be quashed. Cook 5. 120, 121.

1. For the persons by whom, and who may be Indictors or Informers,

Any honest man may follow an Indictment, and any one that is a competent Witness, may be a competent Indictor.

But it seems such persons as are infamous, may not be Indictors. And therefore 11 H. 4. 41. one was discharged of an Indictment because one of his Indictors was out-lawed for Felony. Young 116. Stamsf. 88.

Such as have for misdemeanour in their common informing, been put out by order of the Courts of Justice, cannot be an Informer. Stat 31 Eliz. ch. 5.

2. For the person against whom it is brought, and who may be indicted.

Any person may be indicted that lives within the County, or that have lived there, or that have committed an offence therein. And Women Covert, Infants, and all other such like persons, who may commit an offence against a Law, (if they be not excepted

ed in the Law) may be indicted for that offence as well as others, *Cook* 11.61. *Dier* 104.13.

A Justice of Peace as hath been said may be indicted at the Sessions of his own County, before his fellow-Justices, *Lamb*.631. *Quare* this.

The Indictment may be brought at any time for an offence done against the Common Law; but for any offence against the Statute, it must be brought within the time the Statute prescribeth.

3. For the time wherein it is brought, and in what time the Indictment, &c. must be brought

For some offences it must be brought within a year after the offence done; as the Statute 2 & 3 *Phil. & Mar.* 3. about keeping Kine, &c. 31 *Eliz.* chap. 4. about Armour, 2 & 3 *Ed.* 6. ch. 10. about Malt-making, 5 *Eliz.* 5. about eating Flesh, 33 *H.* 8. 6. about Shooting, 7 *Ed.* 6. 5. about Wines, 32 *H.* 8. 9. about maintenance, 3 *H.* 7. 1. about Inquests for concealment of Felonies. And some others.

For other offences it must be brought within two years after the offence done, as fore-stalling, regrating, and ingrossing, against the Statute of 5 & 6 *Ed.* 6. ch. 14. and some others.

For other offences within six moneths by Statute, 5 *Eliz.* chap. 15. about Prophecie, *Stat.* 4 *Jac.* ch. 5. about Drunkards, 5 *Eliz.* 5. about Fish by the Informer, 33 *H.* 6. 8. 6. about Shooting by the Informer, and some others.

All Actions, Indictments, and Informations, where the Forfeiture is given to the

King alone, shall be brought within two years after the offence done. And all Actions, &c. but the Statute of Tillage, where the Forfeiture is given to him, and another must be brought within one year after the offence done, *Stat. 31 Eliz. ch. 5.* Or in default of that for him within two years; for shooting, for the King within a year; and such as are brought after this time are void. But where the Statute by which the offence is made doth limit a shorter time, there it must be brought within that time, 33 H. 8. 6.

And therefore one being indicted for not baptizing his Childe, and it appeared the offence was three years before, the Court stayed the Indictment, *Mich. 7 Jac. Stoners Case.*

4. For the place of the offence, and in what place it may, or must be said to be.

An Indictment, Presentment, &c. generally must be said to be in a place certain for the *Venue*. And it must be there brought and preferred where the offence is done. *Stat. 1 R. 3. 21.*

If it be upon a penal Law, it must be said to be done there where in truth it was done, else the Defendant shall be found not guilty.

But Informations against Popish Recusants for not coming to Church. For maintenance, champerty, and some others may be alleged to be in any Countrey. See the Statute 21 Jac. ch. 4.

If one be stricken in one Countrey, and dy of that Stroke in another Countrey, he must be indicted in the Countrey where the Death

Stat. 2 & 3 Ed. 6. ch. 24. Lamb 493 And it seems the two Counties, unless London be one of them, may joyn in this case, *Brook in Dier. 45 31. 26.*

If a Felony be done in one County, and a man become accessary thereto in another County, the Indictment against the accessary may be good in the County where he became accessary, *Lamb Just. P. 493. Young 120.*

If one be robbed by the High-way in *Middlesex*, and apprehend the Chief (having the Goods about him) in *Essex*, he may be indicted for this Felony in *Essex*, but not for the Robbery there, for it is no Robbery but in that County, but is Felony where ever he hath the Goods, *Lamb 499. Young 120.*

If one commit a Burglary or Robbery in one County, and be taken with the Goods, and arraigned in another County; if it so appear upon Evidence at his Trial he shall not have the benefit of Clergy, *Stat. 5 Ed. 6. ch. 10. Stat. 25 H. 8. ch. 3.* but upon such Trial the Evidence must be entred upon Record.

One was indicted *Banco Regis* in *Middlesex*, for that he at *B.* in the County of *Middlesex* did procure *I. S.* to kill *I. B.* whereby he killed him at *S.* in the County of *Berks*, and it seems it is good, *9 Ed. 4. 48.*

In Informations, the very County where-
in the thing was done must be expressed, *Informa- ons.*
except it be for Champerty, buying of
titles, Extortion, or for matter of corrupt
Usury,

Usury, or for Ingrossing and Regrating where the penalty appears to be twenty pounds or above, and in some other Cases which may be laid in any County, as pleases the Informer, *Stat. 31 Eliz. ch. 5. Poulton de Pace. 165, 166.* and all Sutes grounded on *33 H. 8. chap. 9.* touching unlawful Games, and Bowes and Arrows, *5 Eliz. ch. 5.* For using any Trade which one hath not been brought up in, shall be heard and determined at the Assizes or Quarter Sessions of the County wherein it was done, or the Leet within which they happen, not elsewhere.

§. For the thing for which a man is indicted, and for what causes an Indictment lieth,

A man may be indicted in this Court for any Felony, for any Trespass, for any wrong done by fraud or force, for any offence against a Statute Law, the Continuance whereof is referred to the Justices of Peace. And therefore upon any offence against any Article of the Charge; as for Extortion, Escapes, Rescues of Persons and Goods, unlawful Distresses, with-holding of Treasure trove from the King, for conveying away men from the Justice of the Law, for hiding and keeping away an Apprentice from his Master, for Popish Recusants, *3 Jac. ch. 4.* For concealment of Felonies in Inquests, *Stat. 3 H. 7. 1.*

But an Indictment in this Court is not good for the taking of such things which are *fera natura*, as Deer, Hare, Partridge, Pheasants, unless they be made tame, or taken out of a Park, for they are not valuable, *8 Ed. 4 5.* Nor for Treason. Nor for breaking

ing a Recognizance of the good behaviour, 8 Car. B. R. Cook 4. part. Inst. 18. Nor for inclosing Commons. Brook Indictment in 1010. For the remedy upon the Forfeiture of a Recognizance is by *Scire facias*, and not by Indictment. Cook 4. part of his Inst. f. 181. *Tet see Stat. 5 & 6 Ed. 6. 25.*

In an Indictment of Treason, the word *Traiterously* must not be omitted. So in an Indictment of Felony, petit Larceny, or Maihm, the word *Felony*; in an Indictment of Murder, *murdravit*, which is sufficient without saying of malice fore-thought; but by Croke Justice the word *murdravit* may well stand for Man-slaughter: and by Williams Justice, if the Inditement is *Murdrum*, and not mention *ex malitia sua præcogitata* it shall be taken onely for Man-slaughter: 1 Ma. Dyer f 99. pl. 63. Trin. 9 Jac. Bulstrode Rep. pag. 144. and so in both Books of Entries the word *murdravit* is used in Inditements for killing *per infortunium & se defendendo*, neither of which is Felony: so that *murdravit* without saying *ex malitia præcogitata* is not good. In an Indictment of Burglary, burghlarily, or buglarily, or burghularily; in an Indictment of Piracy, piratically; in an Indictment of Rape, ravished; in an Indictment of Riot, riotously; Poulton of the Peace, 25. 27 H. 8. 17. Cook 4. 41. Stamford 149 9 Eliz. 4. 26. Fyer 99. 216. 304. For scarce any other words will supply these, and therefore to say, that A. broke the Mansion-house of B. in the night, is not good for Burglary; and yet to say
hath

hath broken, &c. with the intent to commit Felony or Murder, is held to be good; so if it be, that A. hath slain B. of malice fore-thought, and freely, or feloniously, this is not good to charge for Murder, though happily it may be good for Man-slaughter. So if that A. feloniously took B. and her carnally knew, is not good for Rape; so he stole, or ravished, and stole, without Feloniously is not good: So to say, A. took B. into the cold, whereof he died, without Feloniously, is not good.

For a Riot, instead of riotously, routously and unlawfully, was judged void, in 7 Jac. B. R.

To say in an Indictment, Feloniously he led away, without he took, or he took, without led away, is not good; but it must be, took and led, or carried away. So to say, that A. burglarily broke the Church, &c. in the night, *ad depradandum*, to make a Prey of the Goods of the Parishioners in the same being, was adjudged void.

Forcible
Entry.

In forcible Entry on the Statute, 8 H. 6. 9. It must be with strong hand, and with a multitude of people, or it is not good.

Vi & armis with-
out manu-
ports.

The Indictment was, not with strong hand disseised, but with force armed, and it was agreed to be naught, M. 7 Jac. R. B. in *Feltons Case*.

In the Indictment upon the 8 H. 6. ch. 9. it was said, That he against whom the Bill is preferred, disseised him that preferred the Bill with force and arms, *viz.* with swords, &c. omitting with strong hand
ex.

expelled, and it was adjudged good.

If one be indicted as accessory to a Bur- Accessary
glary, the indictment must say maliciously, to Burglar
Dier 99, 304. Lamb 7. P. 50. Poulton de pa- ry.
ce 25. 27 H. 3. 27. 6 Ed. 4. 26. 29. Dier 69.
216. Plow. 475. Cook 4. 41. Stamf. 94. Cook
4 39. 8 Ed. 4. 10. Cook upon Littl. 127 Dier
189. But those Indictments may be good for
Trespas, or some other offence that have
these defects in them.

The omission of these words, with force *Vi & ar-*
and arms, viz with staves, knives, wea- *mis*
pons, and arrows, and the like words in In-
dictments of forcible Entry, or the like of-
fence, do not make them vitious. But it is
good to insert them for aggravation: yet if
they be omitted in an Indictment of Felony,
it seems it is otherwise, for in *M. 17*
Jac. B. R. An Indictment for petit Larceny
was quashed for lack of these words:
yet see the Statute of 37 H. 8. ch 8.

But the inserting of these words in the *Vi & ar-*
Indictment, with force and arms, where *mis* where
they are needless, as in an Indictment that *not neces-*
for an offence that lieth in *non fessans* or ne- *sary.*
glect will not hurt it, Cook 9. 50. In forcible
Entry it is needless, for it is implied, Lamb
J. P. 582. Young 121.

Some think these words against the Peace *Contra pac-*
are necessary to be used in all Indictments of *tem*
Felony, forcible Entry, Riot, Trespas, and
the like; and in all offences against any Sta-
ture, though it be for not doing: and where
is any force, and before the Statute with
force and arms must have been used: for in

17 *Jac. B. R.* one *Palfray* way indicted for a common Barrator, and the Indictment was quashed, because it did not say, *contra pacem, &c.* not against the form of the Statute, *Cook* 9. 30. *Lamb.* 502. *Young* 121. in *Stat.* 4 *Jac. I.*

Vi & armis, where there is a *Malefeasans*, every Indictment is *vi & armis & contra pacem*, where an act is done against the Common-wealth. So it is where a Servant runs away with his Masters Goods above forty shillings, wherewith he was intrusted, and in his custody, and this is not properly said to be *vi & armis*, yet the Indictment runs so, 1 *Croke* 275.

But the inserting of these words where they are needless will not hurt the Indictment. Nor a false conclusion of an Indictment.

*In pace
Domini
Regis.*

The omission of these words, that the party slain was in the year of God, and the publick Peace will not hurt the Indictment, *Cook* 4. 41.

If an Indictment have these words in the beginning, feloniously and of malice forethought; to the Affray, and after omit it to the stroke, yet it is good, *Cook* 4. 41.

If the Indictment be that *A.* beat *B.* and one Horse of the price of twenty shillings feloniously took, omitting of him *B.* this is good, *Fitz Indictment* 6.

If in an Indictment for Robbery, assault he made be omitted, this makes it void for Felony, but not for Robbery, *Dier* 224. *Mil.* 7 *Jac. B. R.*

This

This Indictment was thus. The Jurors present, if *I. B. of, &c.* instead of that *I. B. of, &c.* and it was quashed.

An Indictment was, *Quod quidam A. intra Libertatem Domini Regis villa sua de Cossam, &c. subter mamillam, &c. dedit vulnus, &c. Avus cum pellete plumbeo vulnus totaliter, &c. penetrans in & per corpus, &c.*

Exceptions, 1. That the Village of Cossam was not said to be within the Liberty of Cossam. 2. For that it was *subter mamillam* with a single *m.* 3. For that it was *vulnus*. 4. For that the depth and breadth of the wound was not described, but were over-ruled, yet for want of the word, he strook, made void after Outlawry, and the party discharged, *Longs Case, Cook 5:20.*

Percussio
necessary
in all kil-
lings but
by Poyson.
Nota.

Where the Indictment is of a living thing, the number is to be set down; or of a dead thing in the singular number, or that goeth by Weight or Measure, or of Coyn that is not currant, it must be of the price, not to the value. But if it be of dead things in the plural number, not going by Weight or Measure, or of currant Money, then it must be to the value, not of the price. If it be of dead things, it must be Goods and Chattels, expressing the names thereof in certain. If living things, he must say, an Horse, Ox, Sheep, the number must be expressed.

If it be for stealing a Horse, his colour must be mentioned, as *unum equum coloris nigri, precii, &c. viginti oves matrices pretii cujuslibet eorum 10.s. &c.*

If an Indictment be, that the Goods the foresaid *W. S.* feloniously he took, and *W. S.* not spoken of before, it is naught.

If an Indictment be for taking the Goods of a Church, it must say, the Goods of the Parishioners in the custody of the Wardens, &c. and the Goods of the Church, is not good, *Brook Indict. 33.*

If it be the Goods of a Parson, it must be the Goods of the Rector, not of the Church, *37 H.6 3. Young 120.*

The Goods of a Corporation, they must be said to be Goods of them, by the name of their Corporation.

If the Goods were taken from the Testator, the Indictment must be the Goods of the Testator; but if after his death, it must be the Goods of the Testator, in the custody of his Executors being, *Lamb J. P. 496. Young 120.*

For the taking away of a Coat-armour over a Tomb, it must be Goods of the Executor of him whose Tomb it is. But for a Tomb stone, Goods of the Church. If they be taken from a Trespasser, they must be said his Goods that had the last possession. But if I deliver them to one to keep for me, and they be taken from him, it must be Goods of me in his keeping, *Yung 121.*

An Indictment of the Goods of a Chapel in the custody, &c. Goods of an House or Church in time of vacancy, it is good, *7 Ed.4. 14.*

Verity.

Every Indictment or Presentment, must have verity in it, and it is to be framed as
near

near the truth as may be; for it is to be found by the Jury upon their Oaths, and the Indictment must be *verè dictum*, and a matter of Record, ought to set forth all the truth that by Law is requisite. For of things not appearing, and not being, is the same reason. And every part of it must be found by the Jurors, and no part can be supplied by Averment. And if it be not so, it is insufficient, *Stat. 31 Eliz. ch. 4.*

Also it must have a full and precise certainty, and perspicuity in the Record it self, so that it need no supply by argument or intendment, for it is to be found by the Oath of Lay-men. And this certainty lieth in six things; 1. In the persons that did the offence, and against whom the offence was done. And for this we are to know, that though it be not needful in Informations, yet in Indictments and Presentments, the names of Baptism, and fir name of the party indicted and presented, with an addition of his mystry or degree, and his dwelling place is to be inserted, as *I. S. of W. in the County of G. Mercer; 1 H. 5. 15. Poulton de pace 196. viz. The Town, Hamble, and County of which he is, or hath been of late conversant, o herwise it is insufficient,* and may be avoided. And a mistake in the name of Baptism, is more dangerous than in the fir-name; for a man may plead misnaming of his name of Baptism, but of his firname not.

Certainty,
Uncertainty.

Additions
necessary,
and what
is a good
addition,
or not.

Additions
what are
good.

The addition of the Degree or Mystery must be always such as the party hath at the

very time. But the addition of the place may be of such where he was at any time before, so that the word *lately*, be added : *Young* 119. *Lamb* 3. P. 490, 491.

What not
good.

The addition of names of Dignity by Creation, as Duke, Marquis, Earl, Viscount, Arch-bishop, Knight, Serjeant at Law. Or without Creation, as Baron, Esquire, Gentlemen. Also Alderman, Widow, Spinster, Single Woman, Doctor, Clerk, Parish-Clerk, Merchant, Grocer, Tailor, Broker, Husbandman, Hostler, Millard, Haberdasher, Goldsmith, Butcher, Carpenter, Chapman, Smith, Labourer, Lighterman, Waterman, Spinner, and such like are good, for the Mystery or Occupation. But Farmer, Servant, Butler, Chamberlain, Citizen, Extortioner, Maintainer, Vagabond, Heretick, Usurer, Thief, Schismatick, Dicer, Carder, Chancellor, Treasurer, Sheriff, Coroner, Escheator, Bailiff, Dean, Arch-deacon, Prebend or Parson, which are names of Dignity by reason of Office onely, are not good additions, *Gromp* 3. P. 96. 5 *Ed.* 4. 40. *Dier* 203.

The Inhabitants of a Parish may be indicted, either by their names in particular, or in general, without naming any one of them in particular; and the Indictment is good either way, 8 *Jac.* *Cook & Warburton*.

If a man have two names, or be usually called by two names, he may be indicted by either of them.

If one be indicted by the name of *I. S.* Servant to *I. W.* in the County of *Middle-*

sex

Of Indictments and Presentments. 293

sex Butcher, this is void ; for Servant is no addition, and Butcher shall be referred to the last name, 9 *Ed.4.*48.

So if it be *I. S.* lately of *E.* in the County of *S.* Wife of *W. S.* lately Spinner, it is vitious.

If an Indictment be against three, and in the end of their names is Yeoman, this is defective for the two first names, *Dier* 285. *Plow.* 537.

If an Indictment be against *I. S.* Citizen and Panner of *London*, otherwise called *I. S.* of *London*, Draper ; this is naught, for he may be Panner of *London*, and dwell at *York*.

But Mercer of *London* is a good addition, 36 *H. 6.*3 . The [otherwise called] after, will not help the mis-naming before ; for the addition must be in the premises, not in the [otherwise called.] *Dier* 50.

If it be *I. S.* of *C.* in the County of *G.* lately Yeoman, this is not good, for it must be the Mystry he is now of ; yet *I. S.* lately of *G.* is good for the place, but it is best to write him of the place he is.

This addition must also comprehend the Town or Hamlet, or place known out of any Town or Hamlet, and the County whereof the party is or was ; for the omission of the Town or County, the Indictment is naught. And if there be divers Hamlets in one, he may be named of the Town or Hamlet, or of such a Hamlet in the Parish. But if he be named of a place known, and the place be within the Town, he must

294 *Of Indictments and Presentments.*

be named of the Town: and if both Town and Parish bear one name, he may be named of either.

If there be two Towns or Villages in one Parish, then he ought to be named of the Parish; if there be but one Village in the Parish, he is to be named of the Village in the Parish of *S.* or of the Parish, omitting the Village. But if there be divers Villages or Towns in one Parish, he must be named of which Village in the Parish of *S.* onely. If a man have a Family in two Counties or places, and live sometimes at the one, and sometimes at the other, he may be named of either. And if a Serjeant at Law doth use to keep Terms, he may be said of *London*, or of the place where he dwelled.

If an Indictment be against the Parson of *Dale*, without naming the place of his abode; or against the Rector of the Church of *Dale*, in the County of *Glouc.* this is not good, 22 *H.6.41.*

An Indictment was against divers for a Riot, and it was expressed in what County they were; for that it was quashed, *Pasch.* 18 *Jac.*

An Indictment was for killing a mans wife thus, That the said *A.* was in the Peace, until the foresaid *I. S.* husband of the foresaid *A. S.* of *H.* foresaid, in the County foresaid Yeoman; in this case it was held good, for it was upon view of the body, otherwise not: For, 1. It should have been lately husband. 2. Yeoman shall be referred to the husband, for it can-

no

not be referred to the wife. But if it were Spinster, *contra*, for that addition is applicable to a man or woman, *Dier* 46, 47.

But these additions are not necessary in Informations against the breakers of penal Laws. Nor upon a Sheriffs return of a Rescue, 13 *H.* 7. 21.

Nor is this addition so necessary to the name of the person to whom the offence is done. Yet regularly there must be some certainty in the name of the person against whom the offence is done, *Young* 120. For a Murder may be charged upon I. Parish-Priest of W. without any surname, or of a certain unknown one. The Goods of a certain man unknown feloniously took, and it is good; but if the Indictment say, that he stole a Coat of a man unknown, whom he found dead, this is naught. Yet if the party to whom the offence was done cannot be found, it is good without naming him, as before. So for an Assault, Assault he made upon a certain --- unknown, *Young* 118. And if an Indictment run thus, That he stole twenty Sheep, price, &c. and doth not say of whom, or that they were the Goods of any body, this is not good. So if the Indictment be, that A. entered into a house with ten other persons, and neither name them, nor say they were unknown, this is not a good Indictment.

If an Indictment be against a man for an Accessary, the name of the principal must be set down. So also the Accessary, in case the principal be indicted for that offence,

else it is not good; and therefore if the Indictment be that *A.* commanded a certain unknown man to kill *B.* which he did, this is void: but in case of Treason, Trespas, or Maim, where all are principals, it may be good enough, *Quod procuravit personas ignotas*, to do the Fact.

An Indictment for distraining the Kings Subjects, and doth not say whom, is void.

An Indictment for selling and making of tanned Leather, and did set down the persons to whom it was sold, was misliked, it is traversable, 1 R 3.1.

7. For the time, and how it shall be laid, and when the fact shall be said to be done,

As in personal Actions, so in Indictments, Presentments, &c. the day & year when the offence was done, and sometimes the hour, must be certainly set down, as, The 13. of March, the year of the Lord, &c. now present, or the Indictment will not be good; for if a man be hurt above a year before, it is no Felony; and for Trespas against penal Statutes, the offence must be done within a certain time before, Stat. 13 Eliz. 5. 39 Eliz. 1. 2 Jac. 4.

And therefore if a Felony or Trespas be laid by an Indictment to be done, and no time set down when it should be done, or if it be 10 Martii, without saying in what year, it is vitious, Brook. Indict. 41. But if it be said to be done the day next after the day of Pentecost, or the tenth of March last past, or the tenth day from Easter, the 4 Car. or the *U:as* of the holy Trinity; these are good Indictments, that is certain which may be made; 8 H. 4. 8. 2 H. 7. 7. 3 Ed. 4. 8. and

Of Indictments and Presentments. 297

and so if it be *Anno Domini* 1645. without naming the year of the King, it is good, and shall be taken as we ordinarily take it.

If it be said to be done on the Feast of Incertain-
Saint *Peter*, it is not good, for there are many Feasts of that name, and they have additions, 3 *H.* 7. 5. *Fitz Indict.* 22. But it seems in the Feast of Saint *Michael* it is good.

If the Indictment lay the thing to be done on a day yet to come, it is naught; so of a day that never was, as the nine and twentieth of *February*, except in a *Bissex-ile*, which is every fourth year, for then it hath nine and twenty days.

When several Acts which are done at several times do make up the offence, as the stroke and the death, both times must be certainly expressed, *Brook Indictm.* 41. *Dier* 69.

When several Actions which are done at several times do make up the offence, as the stroke and the death, both times must be certainly expressed, *Brook Indict.* 41. *Dier* 69.

If an Indictment be against *I. S.* for a stroke the fourth of *August*, and death thereby the nineteenth of *December*; and saith further, That *T.* and *W.* the time of the Felony and Murder the fourth of *August*, &c. feloniously were present with Swords, &c. then and there aiding, assisting, &c. this is void, for the Murder was not till the last day; and that *auxilantes* is necessary

298 *Of Indictments and Presentments,*

in this case, for it cannot be supplied by argument or intendment, *Cook* 9. 62. 5. 120. 42.

If an Indictment be that *A.* struck *B.* the nineteenth day of *May*, whereof he languisheth to *May* the twentieth, which nineteenth of *May* he died of the same stroke, this is naught, for it should be, he died the twentieth day, *Dier* 50.

If the offence be done in the night before mid-night, it must be laid to be the day before; if after, it must be laid to be done the following day, *Lamb* J. P. 402. *Young* 219.

An Indictment was, that *A.* such a day did a Felony at *H.* for which *W.* did arrest him at *H.* foresaid, and in safe custody then and there had, until the Defendant upon the foresaid *A.* then and there assault made, and the same then and there rescued, &c. it is doubted if the first [then] made the time of the Arrest certain enough. 2 And whether the last *ad tunc*, &c. may be referred to any part of the said day. But it should have been *diſſo die*, &c.

The day
not neces-
sary.

If a Presentment be in the negative, or an affirmative rising of a negative, as that *A.* hath not scoured such a Sewer, or that by the not scouring thereof such Meadows be drowned, in this case there needeth no year or day, for it affirmeth a present evil, *Lamb* 492. *Young* 119.

Uncertain-
ty.

If the Indictment say, that *A.* stole Goods, the tenth of *March*, and the twentieth of *March*, this is void for uncertainty, for one

Fe-

Felony cannot be twice committed, 2 H.77.

If one lay a Felony to be done the tenth of May, and an escape of him the first of May, year 20. abovesaid, this is naught, for he cannot be accessory before the Fact done, 21 H.7.35.

The place, viz. the Town and County where the Fact was done, must be certainly set down in every Indictment, as Dale in the County of Glouc. And therefore if the Indictment suppose an offence to be done, and do not say in what Town, it is void: so he do not say in what County, 9 H.6.1. If he suppose it to be done in such a place as is not within the County, it is naught, 9 H.6. ch.1. 18 H.6. ch.12.

8. For the place of doing the thing, and how it shall be laid down.

As if an Indictment be laid to be at *Islington*, and say not in what County, it is void. So if one be indicted for selling tanned Leather, and do not say where, or to whom, this is void for incertainty. *Brook Indict. 43. Brook Pleading 158. Lamb 149.* And if an Indictment be that he gave the Livery at such a time and place to him, and that he did wear it, but doth not say when or where, this is not good, 5 H.7.18. Or if he be selling and making of tanned Leather, and no place where, it is naught, for it is traversable, 1 R.3.1. *Lamb J. P. 499.*

If the offence be laid to be at *Dale* in the County aforesaid, having reference to the name of the County, in the margent of the Indictment, it is doubted whether this be a good Indictment.

If one be indicted, that he by the command

mand of one *A.* did rescue a Felon, this is not good; for it is not shewed where the command was given, 3 *H.* 7. 12.

But the setting down of too much, as if it be at *D.* in the County of *G.* in a certain place called *North-clofe*, will not hurt the Indictment.

If it be that he distrained at *Dale*, and *I. S.* rescued the Distress, and doth not say where, it seems this is good, for it shall be intended the first place, otherwise it were in case of such a Return by a Sheriff of the Rescue of a person.

When several Acts done at several times do make up the offence, as the stroke and the death, both places must be laid down certainly; and therefore if the Indictment be that *A.* at *Dale* assault made, and him murdered, without [then and there] it is not good, *Dier* 69.

If the Indictment be, that he gave the wound 27. at *D.* in the County of *G.* and that he died at *S.* &c. and so he murdered him at *D.* this is naught; for he can no more say he killed him at the first place, than the first day, *Cook* 4. 42. 47.

The Indictment may suppose part of the offence to be done in one County, and part in another County, and yet good. As *A.* struck *B.* at *C.* in the County of *Nott.* and *B.* afterwards died of that stroke in the County of *Lincoln*; and in this case *A.* shall be tried in the County where the party died.

The name and quality of the thing in which

which the offence is committed, must also be certainly set forth; as if an Indictment be for forcible Entry into land, the Indictment must say what land. Therefore to say with a strong hand they entred the Tenement, &c. is naught; for Tenement may mean a house, as well as land, meadow, or pasture, *Lamb J. P.* 499. So that he entred the site of the Mannour of *S.* or the Mansi-on-house of *W. S.* this is void for incertainty, *Trin. Jac. B. R.* and if it be Felony, it must be a personal thing, else it cannot be Felony, *Young* 121.

An Indictment of the taking of goods and chattels, it is not good in Trespass or Felony.

If it be dead things, it may be *bona & ca-talla*, expressing the name of the thing in certainty, but if it be of things living, it shall not say Goods and Chattels, but an Horse, Ox, Sheep, &c.

The value or price of the thing wherein the offence is done, must also be certainly set down, to shew the nature of the offence, and whether it be petit Larceny or not, as a certain Cow, &c. of the price of forty shil-lings, &c. feloniously took; for where the number ought to be expressed, as if it be for taking Sheep, Doves, &c. the Indictment must say of the price, or to the value, so much, or else it is not good. And there-fore an Indictment against *A.* that he im-ported one load of Hay, omitting to the va-lue, was adjudged void; an Indictment in Felony or Trespass, for taking Goods and Chattels,

9. For the name and quality of the thing in which the offence is commit-
ted.

Incertain-ty.

10. For the value and price of the thing, in which the offence is.

Commit-
ted.

Chattels, without expressing the name and value of the thing, is void for incertainty. So an Indictment for breaking a Close, and carrying away Corn, omitting the value, is naught, 9 *Ed.* 4. 1.

II. For the description of the matter and manner of the offence.

The matter it self, the nature of the fact, and offence, and manner of the doing of it, must be also clearly set forth, that it may be distinguished and seen what the offence is, whether Treason, Felony, &c. and against what Law it is, otherwise the presentment or indictment will not be good. And therefore if the Indictment be, that A. taken for felony, feloniously and at large he permitted to go, and doth not say for what felony he was taken, this is naught, 8 *Ed.* 4. 4. So that feloniously he broke prison at A. and doth not shew for what he was imprisoned there, 9 *Ed.* 4. 12. 25 *Ed.* 3. chap. 9. So if a man be indicted for making an hundred shillings of Alcumy, like the Money of the Common-wealths, and doth not allege what Money it was, Groats or Pence, this is naught. *Fitz Indict.* 10.

Incertain-
ty.

And therefore in Murder, and Manslaughter, it is good to express the stroke whereof the death ensued, *Dier* 69. If the Indictment be, that he killed with a Dagger, and it was a Sword, it is good enough, *Cook* 967. *Young* 128.

Darvel was indicted for killing *Bowser*, and it is found they were both in the field with their Weapons, and that *Bowser* going out of the field, and returning, drew his Sword upon *Darvel*, and that then *Darvel*

returned back from the Hedge and said, 'tis no place to fight, and so Bowser stroke Darvel, and then Darvel killed Bowser, and hence we collect (saith the Jury) that Darvel killed Bowser in his own defence, and this was quashed for ambiguity and incertainty, *Hill 17. B. R.*

An Indictment for Murder was quashed, for that it said, with a Sword he struck, and omitting which he held in his hand, also for that it omitted that feloniously assault he made upon him, &c. Also for that it did not shew after the *dans ei*, &c. that part of the body that was wounded; also for that it said struck, and omitted then and there: but Exce p^rson was taken, for that it is said *dans ei*, &c. and did not say *idem*, but this was not allowed, *Fuller's case, B. R. Long's case, Cook 5. o. percussit* to express stroke, is a material word.

If an Indictment be for a wound, and it be laid to be under his left arm, or under his pap, or about his navel, these are void for incertainty; but under his arm, about his pap, or in the left part of his body, or in the left part of his belly about his navel; these are good and certain enough, *Cook 4. 41. 9. 114. 9 Jac.*

So if the Indictment be, that he gave one a mortal blow about the breast, this is not good; for it must say in what part the wound is, the depth and breadth of it, if it be not a part cut off. And if there be two wounds alleged, and one of them is more uncertainly set down, this will mar the whole

whole Indictment; if he say, of the wounds foresaid he died, *Cook* 4.41.5. & 20. 9.62.114.

Indictment was for poysoning, and said, that he perswaded the other that the potion was mixed with *Cantharides*, and would make him have Issue, &c. not knowing the foresaid drink to be mixed with poyson, but trusting the foresaid perswasion (the said *W.* took and drank) omitting Poyson aforesaid, and it was naught; and that the words following immediately after the taking of the Poyson aforesaid will not help, for a Fault in an Indictment, cannot be made up by implication, *Cook* 4.44.

The Indictment was thus, The Son had taken his sick Father, and carried him into the cold weather, whereof he died; it was disallowed, because it wanted feloniously, and [struck] is an apt, if not a necessary word for this Indictment.

An Indictment was, That certain *A. B.* within the Liberty of our Lord the King of his Town of *Cossam*, &c. under the Pap, (*mamillam*, &c.) gave a Wound, &c. giving with a Leaden Bullet, &c. penetrating into, and through the body, &c. and Exceptions were taken; 1. For that the Village of *Cossam* was not said to be within the Liberty, and therefore uncertain. 2. For that it was *subter mamillam*, with a single *m.* which is a word insensible. 3. For that it was Wound, for that the depth and breadth of the Wound was not described; but these were over-ruled: and

and another Exception taken out of these words, That a Dag with Powder and a Leaden Bullet laden upon him *H.* he discharged, giving the same, &c. one mortal Wound, omitting the word [struck] and for this it was quashed, after Outlary, and he discharged, *Cook* 5.20.

If an Indictment be against *I. S.* for a stroke, 4. *Augusti*, and Death thereby, 19. *December*, and it goeth further and saith, *T. M.* &c. the time of the Felony and Murder, the fourth of *August*, &c. feloniously were present with Swords, &c. then and there aiding, assisting, &c. it was adjudged insufficient, for the Murder was not till the last day: it should have been, in manner and form aforesaid. Also in this it was agreed, that the clause of aiding, &c. is necessary, in this case, and that without it the Indictment is insufficient: for an Indictment cannot be supported by argument or implication, *Cook* 4.42.47.5.120.9.62.

One was indicted for taking an half-penny from another in the High-way, and Assault he made was omitted. therefore the Court resolved it a good Indictment for Felony, but not for Robbery, and therefore he had his Clergy, *Hil.* 27 *Jac.* *B. R.* *Dier* 224.

John Green was indicted for stopping an High-way leading from the Village of *A.* to the Village of *B.* and Exception was taken because he did not shew with what he did stop it; but it was not allowed, *Hil.* 18 *Jac.*

An Indictment was preferred in *Banc Reg.* for subornation of Perjury, and the substance of it was this, that where the 25. of *January 18 Jac.* divers Articles were preferred in the Court of *Chancery* at *Westminster* in the County of *Middlesex*, for the good behaviour against *J. S.* and *Henry Ockley*, then and there produced to rectifie the truth of his knowledge upon the Articles foresaid, then and there swore the said Articles to be true according to his knowledge, whereas in truth the foresaid *H.* knew not the foresaid Articles, or any of them to be true, and so the foresaid *Henry* manifest Perjury, then and there committed, and that the said *John Whisly* did then and there suborn him to commit the said Perjury, *contra pacem*, and against the Laws of *England*. And two Exceptions were taken to this: 1. For that he did not allege that the Articles were false. For if they be true, and he swear them so in his knowledge, though he know them not to be so, this is not Perjury. But this was disallowed by the Court, and held to be Perjury. And a second was taken to it, because he did not conclude against the form of a Statute. For it was said, that Perjury was no offence at Common Law, except onely in the same Court where it was done; but this was disallowed also. And it was held, that Perjury was punishable by the Common Law, *Mich. 20 Jac.*

The Inhabitants of *Epnay* were indicted for suffering two Cribbs to ly unrepaired, by which

which the water over-flowed into the Highway and marred it, and Exceptions were taken because it did not shew how these Inhabitants were chargeable by prescription, and therefore quashed. But if the Indictment had said, That the Inhabitants of Epny ought to have repaired it, it might have been good, especially after a Verdict, and the Inhabitants found guilty; for it is then to be presumed that they were satisfied how they were chargeable. And if there be a Nuisance, by the not cleansing of a River; and it cannot be known who should do it, it seems they must do it that have or may have most benefit by it, as those whose grounds are nearest, or have the fishing there, *Brook Presentment. 5. 10, 11.*

A Presentment was, that he had stopped a course of water from S. by suffering his Trees to grow to the Nuisance; it seems he shall not be amerced for this, till he be commanded to amend it, *Brook Presentment. 11.*

Highways,
Nuisances.

One was presented, that he and all those, &c. were wont to cleanse such a Gutter for the ease of the Highway, *Ratione tenura ejusdem terra*, and Exception was taken that he did not shew where the land is; for he may say, that the land is not charged, or that he hath it not, or the land may lie in another County, and then it is not triable here. But if it had said by reason of the tenure of the same land, this might make it good. So if it be *Ratione terrarum in S.* in

general, it is good. And in these cases, it must be the King's High-way that suffers, else the party indicted may shew it, 5 H.7 3. *Brook Present.* 9, 10, 18, 22.

Bridges ought to be repaired *Ratione tenura aut prescriptionis*. Tenure, by reason that they and those whose Estate they have in the lands or tenements are bound in respect thereof to repair the same, but they that have land on one side or both sides the Bridge are not bound of common right to repair.

Ratione prescriptionis tantum. Bodies politic may be bound by prescription and usage because they are local.

But a natural person cannot be bound by any act of his Ancestour without Assets, 2 *Instr.* p 700.

A Presentment that there is such a Highway, that T. S. by reason of his Tenure ought to repair it, that it is decayed; was ruled to be naught, because it wanted these words, from the time the contrary of which, 21 *Ed.* 4. 73. *Brook Presentment*, 19, 20.

If the Indictment be, that a man made an hundred pound of Alchimy like the Money of England, and doth not shew like what Money, as Groats, Shillings, &c. this is not good, *Dier* 96. So, that he spake words against the King, and shew what words incertain; and then adde, or such like, *Brook Affion sur le case*.

Incertain-
ty.

An Indictment against a man that he is a common Thief, a common mil-liver, or a common

common Fore-staller, or a common Conspirator, or a common Champertor, *Break Indict.* 12, 19. *Young* 117. and shew not in what particular, it is void, *Plow* 75, 29, 45. So, to say of an Officer, he is a general Extortioner, 25 *Ed.* 3. *Stat.* 3. chap. 9. is void.

So to say, they are Insidiators of the ways, and Depepulators of the fields, they are void, 4 *H.* 4. ch. 2. 17 *Ed.* 4. 4.

If it be that *I. S.* of, &c. (being a common deceiver of the Subjects) the 18 of *Jan.* the 17 of *Jac.* at *L.* in *London*, afore-said, two stalks of Clothes (*Libratus*) in stead of two Clothes, for eighteen pound of lawul Money of *England*, to *A. B.* of *S.* deceitfully sold, then warranting them to be Clothes, whereas he knew them to be counterfeit, &c. This is a good Indictment. *Pikes case.*

To indict a man for Battery and wounding, and not say with what Weapon, not in what part of the body he is wounded, is naught.

Yet to say that he slew a certain man unknown, or for the stealing of the Goods of a man unknown, is good, *Stamf. Pl. Cor.* 95. *Young* f. 117. *Cook* 120.

If there be two degrees of an offence, as making and publishing, and the Indictment speak but of one, it is naught, 6 *H.* 7. 12.

To charge a man with Homicide, and not to say with what Weapon, is not good. *Burton's case.* 14 *Jac.* *B. R.*

An Indictment that *I. S.* when he was an
D d 2 Officer,

310 • Of Indictments and Presentments.

Offi er, took from W. S. twenty shillings, it seems is good for Extortion, *Brook Indict. 11.*

If an Indictment be against an Accessary, the mannet of the Felony must be set down. And that he knowing him to have done such a Felony, did feloniously receive him; otherwise it is, if he be attainted of Felony in the same County. And therefore it is not good to say, he received the Goods, and not the Felon, *Stat. 2 & 3 Ed 6. ch. 4.* nor to say, that he knowing him to be a Felon at A. he received, &c. without shewing what Felony he committed; nor without saying, he knowing it, received him feloniously, unless he receive one attainted with Felony in the same County, 7 H.6.42,65. 2 Cook 4.43,44. Young 125.

An Indictment being, that A. was present when B. was murdered, and said not that he did strike, aid, comfort, or cause to be stricken, it was quashed, *Brook Indictment 15.*

If it be, knowing those men Felony, &c. to have committed at B. feloniously he received, &c. this is naught also; for it doth not shew which of them he received. But it must be, that he did receive them all four by name, or three, two, or one of them by name, 30 H.6.2. And yet if four be indicted joyntly, they are hereby indicted severally, *Poulton de Pace 168.*

2. For o-
ther cause

If an Indictment finde any matter of Record, as Outlawry or the like, that is not shewed to the Jurors under the foot of the
Seal,

Seal, it may be rejected, for Jurors are to find matters of Fact only, *Lamb J. P.*

503.

If a man be indicted for an offence at the Common Law, which is none, this is void, and the party must be discharged. For if it be an offence made upon a Statute, he must then be indicted upon the Statute.

On the Statute, and how it shall be made, and when good, or not. Mis-recital.

The Indictments that are grounded upon a Statute, need not (as heretofore was used) to recite all the Statute *verbatim*, and the time of the beginning, continuance, and end thereof. Nor is it policy so to do; for Mis-recital is dangerous, and will make the Indictment void. But the Statute for substance must be pursued strictly, and *in terminis* in the Indictment. And the material words according to the purview thereof, and the offence sutable to it, must be certainly, and with full words described; for if any thing material in the setting forth of the Statute, and the offence, be omitted, the words [against the form of the Statute] (which do only supply matter of circumstance, and not of substance) will not help it. The course therefore is fully and certainly to describe the offence against the tenour of the Statute, and to make the Indictment as large as the Statute, and then to conclude in these words, against the form of the Statute, or of divers Statutes of our Lord the King, &c. where there may be many Statutes thereupon set forth and provided, and against the form of the Statute, omitting all that comes after, is good enough, *Plow. 79.*

312 Of Indictments and Presentments.

80,84. *Dalr.* 360. *Crompt* 93,94. *Lamb* 7.P. 592. *Young* 121. But if these words, [against the form of the Statute] be left out in an Indictment for an offence which is so by a Statute, as a Riot, or the like, the Indictment is erroneous; for the offences are not punishable but by the Statute, *Lamb* 502. *Crompt.* 88.

If the Statute say, the Subsidy not paid, or the Collector not agreed with; it is not sufficient to lay in the Indictment the Subsidy not paid, without saying the Collector was not agreed with, *Plow.* 1.

If the Indictment be according to the word of the Statute, and not according to the sense, it is good enough, and the party may help himself by pleading, or giving in Evidence the special matter. As if an Indictment be against a man for taking of more than the Market-price, and the Case was, that he took it of another, not of his Guests, 18 *Jac. B. R.*

An Indictment was against divers men, that being sixteen years of age, they had not come to any Parish Church by the space of a Moneth; Exceptions were taken 1. Because the Indictment did not say they were Popish Recusants. But *quere* in that Statute, there is a clause that the Indictment shall not be quashed for want of form, *viz.* *Stat. 1 Eliz. chap. 2.* 2. Because they did not say, having no lawful excuse for their absence, and quashed. For an Indictment upon a Statute, must contain all the material passages of the Statute.

An Information was exhibited in the Exchequer, and thereby an usurious Contract in certain, that the party had taken more than the ten pound for the loan of an hundred pound, did appear, so that it was corrupt, and it did plainly appear; and he concluded against the form of the Statute, and because he did not say expressly, that it was by corrupt loan, according to the words of the penal Law, the Information was adjudged insufficient, *Cook* 11.58.

A was indicted upon the Statute of 5 *Eliz. ch. 1, & 2.* for aiding another, knowing him to be a principal maintainer of the Authority of the Bishop of Rome, with these words, against the form of the Statute; but because the Indictment wanted certain material words, expressly mentioned in the Statute, (*viz*) upon purpose, and to the intent to extoll the Authority, &c. It was by the more part of the Judges agreed to be void, *Dier* 163.

And yet it is, that an Article upon the Statute 1 *M.* that he did contempuously disturb the Minister in time of Divine Service, against the form of a Statute, without [willingly, and of set purpose] was good, 42 *Eliz. B. R. Travers case, Dier* 112. *Pl.* 86.

So if one bring an Action upon the Statute of 6 *R. 3.* of a Feme ravished against the form of the Statute, and it is not said, she consented to the Ravisher, is good, whereby it appeareth, that the Law is not so nice and precise in case of Declaration be-

314 *Of Indictments and Presentments.*

tween party and party, as it is in cases of Indictments, 11 *H.4.* 13, 14. *Cook* 5, 120.

If an Indictment be, that *A.* disseised *B.* on force, against the form of the Statute in the Parliament of the *L. H.* the 6. lately King of *England*, the eighth year of his Reign, is not good, if the Entry of *A.* be lawful. But it must be that *A.* expelled *B.* out of his Frank tenement.

A Presentment was thus :

John Smith of *Ludlow* in the County aforesaid, being the Servant or Deputy of *Oliver Floyd*, Official and Commissary of the Bishop of *Hereford*, the 27. of *February* the 18. of *January*, extortiously required, had and received eight shillings of lawful, &c. of *Thomas Maud* of, &c. for writing the Administration of the Goods and Chattels of *John Lile* deceased, &c. by colour of the Office of the said Commissary, and the Indictment was quashed, because he did not say, Servant or Deputy of the Commissary. And afterwards he amended it, and made it, being Scribe or Deputy of the Commissary, &c. and it was quashed again.

Also another Exception was taken, for that he did not say, of what value the Goods were, and yet said, against the form of the Statute, for the Goods may be above forty pound, and then it is a Case omitted ; and in this Case it was agreed, that if there be any Fault in the Indictment, (against the form of the Statute) will not help, *Mich. 28 Jac.* As if an Information be for Usury,

Usury, and doth not say, corruptly, (against the form of the Statute) will not help, for those words supply onely circumstance, not any matter of substance. Opinion of the Court, 18. *Jac. B. R. Dier* 3 12. 363. 11 *H.4.* 13.

One was indicted upon the Statute of *Q. M.* for High ways, and divers Exceptions were taken to it: 1. For that it did not shew who were the Surveyors then; but it was ruled that they need not be named. 2. For that it shewed, that they gave notice after *Easter*, and did not shew which *Easter*; but it was ruled, that it was sufficient to say, that a day was appointed for reparations, at which day he made default. 3. For that the Indictment saith, having two Corves of Land, and the Statute saith (occupying) but it was ruled to be good, for if one suffer his Land to be fresh, yet he is within the Statute. 4. For that he did not say, the Way to be amended doth lead from or to a Market-town; and it was ruled to be good, for it said, that it was an High-way that leads from Town to Town, *Mich. 21 Jac. B. R. By the Court.*

Presentment was thus:

That a certain *A. I.* being an Hostler the first of *June*, the seventeenth of *January* had, and received at the Parish of *S.* of divers Subjects of our Lord the King, for two hundred Bushels of Oats, sold, and uttered within his Mansion-house, according to the rate of two shillings and six pence for the Bushel: whereas the first of *July*, the sixteenth

teenth of *January*, and after to the seventh of *June* the 17 of *Jac.* the common price of Oats in the Markets of *Brainford* and *Stanes*, and other Markets of the foresaid Country of *Middlesex*, was not beyond the rate of twenty pence for every Bushel, against the form of the Statute, &c.

And upon non-guilty, the Jury found him guilty, and divers Exceptions were taken against it (amongst others) that he did not allege expressly the common price of the Marker, but said that the price was not beyond. 2. That he said, where the price was not beyond twenty pence for every Bushel, where he ought to have said for any Bushel, or for Oats. 3. For that he did not say, that he was an Hostler at the time of the offence. 4. For that he said of divers Subjects, whereas he should have said, of divers Gusts. 5. For that he said, within his Mansion-house, when he should have said, within his Inn. 6. For that he alleged the Sale to be without time or place. 7. For that he said, *Recepti pro 200. modis avenarum*, *Anglicè* Bushels, and said not of Oats; yet the opinion of the Court was, that the Indictment was good, *Hill. 8 Jac.*
B. R. Johnson's case.

A Parson was indicted in *B. R.* upon the Statute 1 *Eliz.* for not celebrating the Sacrament of the Lord's Supper, according to the Rites and Ceremonies of the Book of Common-Prayer, made in the time of *Ed. 6.* (*viz.*) in not placing the Communion-Table in the midst of the Chancel, or in some

some convenient place for the People, and in compelling the People to come to a Rail at the upper end of a Church, not convenient, &c. and it was quashed, for that it did not shew what Rites are contained in the Common Prayer-Book, and it is too general.

Serjeant *Richardson* was indicted upon the Statute of *Westminster* 1. chap. 29. and two Exceptions were taken to the Indictment: 1. In the form, for it charged him that he spake these words, *Anglicè*, He knew it to be otherwise: Where it should have been, I know it to be otherwise. For otherwise it is uncertain and insensible. 2. In the matter. 1. Because it ought to be in pleading, not in speaking: 2. Because this Statute did not extend to the Star-Chamber: For this was not erected at the time of the Statute, but these words were laid to be spoken there, and it was quashed for insufficiency, *Trin.* 21 *Jac.* B. R.

A and B. were indicted, because they riotously such a day, entred the Messuage, &c. of I. S. at D. in the County of S. being the Frank-tenement of the said I. S. against the Statute, &c. and it was quashed, because he did not say, then being the Frank-tenement of I. S. H. 16 *Jac.* B. R.

I. S. de, &c. was indicted, because he dwelling in *Brainford*, 1. die *Apr.* 7 *Jac.* and being a Pedler, at divers times and places, a Vagrant and idle person, and was a Pedler

a Pedler wandring at divers times and places in *Middlesex*, and that the eleventh day of *May*, 7 *Jac.* he went to *Hackney*, and then and there sold a Quoit, and divers other Wares at *Hackney*, and divers other places, to divers in their houses, and out of the Fairs and Markets, against the Law and Statutes in this case provided, and so forth, and it was adjudged good.

One was indicted upon the Statute of *Jac. chap. 5.* at the Sessions in the County of *Oxford*, that he having an Issue male, did not baptize it within a moneth after the birth of it; and Exception was taken to it because he did not say when he had it, for perhaps he had it before the Statute, and then it was out of the Statute; but this Exception was not allowed, for it was said, it should be intended after the Statute, and where the Statute speaketh of questioning the party in a Court of Record, it shall be understood by Information in the Courts at *Westminster*, by Indictment in other Courts of Record.

An Indictment was for entry into one Messuage or Tenement, and two Acres of Land to the same Messuage belonging: and the Indictment was farther, that out of the possession of the Messuage aforesaid, he held out, and it was adjudged insufficient, and the offenders discharged; for Messuage or Tenement is so incertain, that the Court cannot tell of what to make restitution, and it is not good, for the Land belonging to the said Messuage is not good

good, for both refer to the first incertainty.
One was indicted upon the Statute of
8 H.6. and Exception taken, because in the
first part of the Indictment is a Messuage,
and after, house aforesaid, and ruled good ;
for it is all one : *Trin. 22 Jac. B. R.*

One was indicted for entering into Land,
and ousting the Termor, and disseising the
Lessor, and it was found, if the Lessor re-
fuse restitution, yet the Lessee may pray,
and have it, *Trin. 7 Jac. B. R. per Williams
Justice.*

An Indictment was, that where A. was
Lessee for years, the Reversion to B. and C.
entered with force, and upon A. and disseised
B. in the Reversion, and omitted these
words, and did out A. of his Term, and it
was adjudged void ; for if the Lessee be not
out, the Reversioner is not out, *Mich. 7 Jac.
Shellitan's case.*

In the Indictment upon 8 H.6. chap 9. it
was said, That he against whom the Bill was
preferred, disseised him that preferred the
Bill with force and arms, with Sword, &c.
omitting with strong hand expelled ; ad-
judged good at *Stafford Assizes, 22 Eliz.*
for that it said, against the form of the
Statute foresaid, which was rehearsed in
the Bill.

An Action was brought upon 21 H.6. for
not returning a Burgefs. The words of the
Statute are, That the Sheriff shall send his
Precept unto the Mayor, and if there be
none, then to the Bailiff. And the Informa-
tion was, that he had made his Precept to
the

the Bailiff, and did not aver that there was no Mayor, yet ruled good, for that is intenable; unless it be shewed on the other side, *Hobert Rep.* 107.

An Action was brought upon the Statute of 6 R. 2. of a Woman ravished against the form of the Statute, and it was objected that it was not laid, that she did consent to the Ravisher, but because it was laid to be against the form of the Statute, it was held good, 11 H. 4. 13, 14.

A. brought Trespass against B. upon the Statute of 51 H. 3. that no man be distrained by his Beasts of Plough, &c. and counted for the taking away the Beasts of the Plough, &c. but did not shew that there was any other Distress, yet it was adjudged good by these words, against the form of the Statute, *Dier* 312.

An Action was brought upon M. for disturbing the Minister, &c. and it was objected, that the words [purposely and willingly] being in the Statute, are omitted in the Court; yet it was adjudged good by reason of the conclusion, against the form of the Statute, 42 Eliz. B. R. *Trevens case*.

13. When it is with a Certificate.

An Indictment is sometimes certified by the Justices of Peace to another, and sometimes by another, as from the Coroner or Steward, &c. to them. And in both Cases as it is certified, it may become erroneous, and liable to destruction. As if an Indictment sent into the Kings Bench, or an Inquisition taken before the Justice of the Peace,

Peace, and omit, as also divers Felon, &c. or omit, to conserve or assign, 12 H.7.25. 2 R.3.2. Or if it be taken at the general Sessions of the Peace, and say not before what Justices of Peace; or if it omit, by the Oath of honest and legal men; or if the Inquisition be taken on Tuesday and Wednesday, these are all naught, Cook 9. 31.114. Cook 4.48. Or, the Jurors present, and omit all their names. Or, the Inquisition taken such a day and year before I. S. and name no place, Dier 69. Brook Indictment 50. And if he shew not by what Commission the Justices took, it seems it is not good, Stamf.96. 22 Ed.4.12.

If a Coroner send in an Indictment, and return it taken before I. S. Mayor of London (who is always Coroner) yet if it say not and Coroner, it is not good, for it may not be supplied by intendment, 2 Ed.4.10. So if it be before the Coroner, and say not in what County it is. But if it say, before I. S. Coroner in the County, or of the County foresaid, it is good enough; too much subtilty in Law is condemned.

If an Indictment be said to be taken before S. Steward, and say not in what Court, and to whom he is Steward. Or it be said to be taken at the great Court of I. S. with the Leet, or at the County of Middlesex, with the turn of the Sheriff, these are not good.

An Indictment not good to one purpose, may be yet good to another: as if one be indicted of Felony, and the thing falleth out to

When an
Indict-
ment void
to one
purpose,
may be
good to
another.

to be no Felony, but is Trespass, then the Indictment is good for Trespass, to put the party to his Fine, *Crompt. 96.* If *A.* be indicted for stealing the Goods of *B.* and the Jury do finde that *C.* stole them, and *A.* took them, but not feloniously from him, this is not good for the Felony, but it may be good for the Trespass. But if *A.* be arraigned upon an Indictment of Murder taken before the Coroner, and is found not guilty; as they must finde who did kill him. So if they do finde that *C.* did it, this is good, *Stamf 90. Young 125.*

If an Indictment be, that feloniously he cut down Trees, and those carried away, or with force and arms cut down Trees, and feloniously carried away; neither of these will make it Felony, it may be a Trespass; for no Felony can be in Trees standing, but if it be with force and arms cut down Trees, and those feloniously (at another time after) took and carried away, this may be Felony. And where in an Indictment of Felony, feloniously is wanting, it may nevertheless stand good to make it Trespass. Though an Indictment that is faulty (as it seems) cannot be salved by amendment, *Stat. 18 Eliz 13.* as other Records may be, yet it may be avoided by Plea, *Stat. 37 H.8.* False Latine will not avoid an Indictment, as *prafato Regina, &c.* because it is Latine, but if it be *vocabulum artis*, as *burgariter* for *burglariter*, *murdredum* for *murdrum*, *feloniter* for *felonice*, then it makes the Indictment vitious, *Cook 5 Rep.*

Long

Long 15. before Judgement, by Exception, for Error, before or after a Judgement, and by a Writ of Error after a Judgement or Outlawry, which may be had in the Kings Bench after the removal of the Indictment thither. But if a man will avoid it for any formal Fault in the Addition, it must be done before the party indicted hath pleaded to the Indictment; for by it he taketh on him to be the same person, 8 Ed. 4. 15. 35 H. 6. 12. Yet Outlawries thereupon may be reversed for this defect at any time; but of other Errors the party may take advantage at any time before Judgement to quash, or after Judgement to reverse it: As if the first Indictment be in a wrong County, or the first charge him as principal, the second as accessory after the Fact.

If one have been indicted for the same offence, though by another name (being called by two names) for which he was indicted, or hath been convicted for it, by appeal at the suite of the party, he may plead this, and avoid the Indictment, Dier 85. Cook 4. 40, 41. especially if it be Felony; for a man must not be twice questioned for his life for the same offence, but being once convicted or acquitted so long as this Indictment is in force, though the new Indictment suppose the Fact to be done in another year, or the Process be erroneous, or be quashed for insufficiency, he may not be indicted *de novo*, Poulton de pace 169.

Conviction in an Appeal is a good Bar to

an Indictment for the same Felony, *Cook l. 4. Vaux, ch.*

Darley was found guilty of Man-slaughter, but not guilty of Murder upon an Appeal; and afterwards was indicted for Murder at the Kings Suit, and he pleaded the first Conviction, and it was a good Bar, *Cook l. 4. f. 40.*

Judgement in Battery pleaded in Bar to an Appeal of Maihm, and it was adjudged good, *Cook 4. Hudson's case.*

Judgement in Trespass *pro bonis asportatis* is not Bar in Appeal of Robbery, because it is of a more high nature, *ibid.*

Auterfoits convict of Man-slaughter, and Clergy allowed, is a good Bar in an Appeal of Murder, *ibid.*

But when a man is discharged upon an insufficient Indictment the Law hath not had its end, nor the parties life been put in jeopardy; and therefore in such Case cannot plead *Auterfoits* acquit, &c. *Cook lib 4. Hudson's case.*

If the Indictment be about a thing whereof the Justices of the Peace have no Conusance, as which belongs to the Justices of the Forrest, or the like, the party indicted may plead it to the Jurisdiction of the Court, and avoid the Indictment, 21 H. 7. 31.

Sir Richard Hatgrave, Hill. 17 Jac. B.R. was indicted for the stopping of a way in the County of York, and he moved to be discharged, because he forty years before had inclosed the way, and then left a good and

convenient way, which had continued ever since; and the Judges of the Court resolved, that if the Justices of the Peace would certify this to them, he should be discharged.

If the Indictors be Felons, such as have been out-lawed and quitted by pardon, and are not honest and legal men, the party upon shewing this Exception (it seems) may be discharged, 11 H.4.35.

The Kings Pardon is a good Plea in Bar of an Indictment. So that one was indicted before of the same Felony, and acquitted upon it, *Young* 124, 125.

Resolutions of the Judges of Assises,
1633.

Question I.

WHETHER the Church-wardens and Over-seers of the Poor of a Parish with assent of two Justices of Peace, one being of the *Quorum*, may by the Statute of 43 *Eliz.* c.2. or any Law inforce a Parishioner of the same Parish, to take a Childe of a poor Parishioner of the same Parish, who is not able to keep his said Childe, to be an Apprentice?

Resol. The Statute of 43 *Eliz.* which saith, that the Church-wardens and Over-seers of the Parish shall put out Children to be Apprentices, necessarily implieth, that such as are fit must receive Apprentices, and the putting out of poor Children to be Apprentices

prentices is one of the best ways for the providing for the Poor.

Q.2. If they may, then whether they must not give Money with him, and who shall determine what Money shall be given with him, if the party that is to take such an Apprentice, and the Church-wardens and Over-seers cannot agree thereupon?

Resol. There is no necessity that Money must be given, but that must be left to the discretion of the Church-wardens and Over-seers, all circumstances of age and ability being considered, and if they cannot agree with the party, then the Justices of Peace near adjoining: or in their default the Sessions of Peace are to determine these Controversies.

Q.3. Whether a Knight, Gentleman, Clergy-man, or Yeoman, or one that is Sojourner, using Husbandry, Cloathing, or Grasing, or the like, may be enforced to take such an Apprentice?

Resol. Every man who is by Calling or Profession or manner of living, that entertaineth, and must have the use of other Servants of the like quality, must entertain such Apprentices, wherein discretion must be given upon due consideration and circumstances.

Q.4. Whether a wealthy man keeping few or no Servants, not wanting a Servant, but living privately may be enforced to take such an Apprentice; if not, then whether he may be taxed towards the putting forth of such an Apprentice?

Resol.

Resolutions of the Judges of Assise. 327

Resol. For the receiving of such Apprentices, the Answer may be referred to the Question next before; but out of doubt every such person must contribute to the charge, as to other charges for the provision for the Poor.

Q5. Whether they may inforce a Parishioner that is of one Parish, to take such a Childe Apprentice, that is of another Parish, but within the same County or Division, if the proper Parish be not able to provide for the Children of the same Parish?

Resol. The Justices may provide Masters for them in other Parishes within the same Hundred; if the same Hundred be not able, then out of that Hundred in the rest of that County, as for other provision for the Poor, which must be at a Quarter Sessions.

Q6. If such a Parishioner may be inforced to take such an Apprentice, and shall refuse not onely to take such an Apprentice, but also refuse to be bound to appear at the next Quarter Sessions, or Assises, what shall be done to him?

Resol. If any refuse; let such an one be bound over to the next Sessions or Assises; if he refuse to give such Bond, let him be sent to the Gaol, there to remain untill he will give such Bond.

Q7. If such a Parishioner who refuseth to take such an Apprentice shall be bound over to the Sessions for not taking such an Apprentice, and when he appeareth there, shall likewise refuse, what shall be done to him, and what shall be done to the Parents

who refuse to suffer their Children to be put out to be Apprentices, themselves not being able to maintain them?

Resol. If at the Sessions or Assises such a one refuseth to take an Apprentice, and his excuse be not be allowed, it is fit that he be bound to the good behaviour, and it will be a good course to indict such a Refuser for a Contempt, and thereupon to fine and imprison him, if he refuse to be bound to the good behaviour, let him be imprisoned untill he will; and the Kings Book of Orders directs that such be bound with good Sureties to appear at the Council-board; and if the Parents of such poor Children refuse to suffer their Children to be bound Apprentices, or being bound, intice them away, themselves not being able to maintain them, let them be committed to the House of Correction.

Q.8. Whether it be in the power of any General Quarter Sessions to mitigate any penalty upon a Statute-Law; if the party indicted shall submit himself to the Fine of the Court, and waive the Traverse?

Resol. If the party be convicted or confess the Fault, it is not in the power of the Court to mitigate the Fine, in such Cases where the Statute makes it certain: but if the party indicted protesting his innocency, yet *quia noluit plitare cum Domino Rege*, puts himself upon the grace of the Court, the Court may impose a moderate Fine, and order to forbear the prosecution.

Q.9. If any be bound to appear at the Sessions,

Sessions, and shall tender submission to the Court, whether the Sessions may stay the Indictment, and mitigate the Fine aforesaid upon the Confession of the Fact?

Resol. This is answered before to the next precedent Article.

Q 10. If a man be convicted for being drunk, tipling, and keeping an unlicenced Ale-house, or being licenced, for suffering others to remain tipling in his house, or for swearing or driving Cartel upon a Sunday, contrary to the Statute in that case provided, whether the Justice of Peace, before whom he was convicted, or any other Justice of the Peace may discharge him of all or part of the Forfeiture or punishment appointed by the Statute?

Resol. The Justices have no such power of mitigation after Conviction, where the Statute appoints the measure of the punishment.

Q 11. Whether a Constable may upon a Warrant for carrying one to the House of Correction for keeping an unlicenced Ale-house, upon the second Conviction break open the house wherein the party convicted is to apprehend him?

Resol. This Question is to be advised upon, it is put in general terms and referred to be considered in the particular where it appeareth.

Q 12. If a Woman unmarried be hired from week to week, or from half-year to half-year, in one Parish, and there be gotten with childe, and then goeth from

thence unto another Parish, where she is settled in service by the space of two or three moneths, and then discovered that she is with childe; The Question is, whether she shall be settled in the Parish where she was begotten with childe, or in the Parish where she was last settled?

Resol. The place where such a Woman was lawfully settled, is the direction in this case, not where she was begotten with childe.

Q 13. If a Woman-servant unmarried be begotten with childe, and then goeth out of her Mistress service, before or after it is discovered that she is with childe, and the reputed father be run away, or is not able to free the Parish: whether the Master may be enforced to provide for her till she be delivered, and for a moneth after?

Resol. If the Master hath legally discharged his house of such a Servant, he is no more bound to provide for her than any other.

Q 14. In case a Parish consist part of ancient *Demefn* and part of *Guildable*, an *Assise* is made for the relief of the maimed Souldiers, the Gaol, &c. according to the Statute of 24 *Eliz. cap. 2.* whether the Tenants in ancient *Demefn* shall contribute with the *Guildable* for the payment of the *Assise*?

Resol. The Statute doth not distinguish between the ancient *Demefn* and the *Guildable* in these Cases, *Ubi lex non distinguit ibi nec nos distinguimus.*

Q.15. Whether an Indictment of Forcible Detainer be within the Statute of 1 Jac. c.5. and not to be removed by *Certiorari*, unless the party indicted first finde Sureties according to that Statute, and whether the party indicted be to be bound in his absence to prosecute according to that Statute, and whether an Indictment of Forcible Entry, &c. found at a private Sessions be to be removed by *Certiorari* without Sureties, according to that Statute?

Resol. This is fittest to be left unto the Court of Kings Bench, to whose Commission and Jurisdiction this is most proper.

Q.16. If one be convicted upon the Statute of 3 Car. R. c.13. for driving of Cartel on the Sunday through several Parishes; whether he forfeit twenty shillings to every of the said Parishes, or onely to one; if to one, then to which of them?

Resol. This Statute giveth the Forfeiture but to one twenty shillings for one Sabbath-day. Although the driving of that day be through divers Parishes. Therefore where the Action is first attached, and the Distress first taken, that Parish shall have the benefit of the Forfeiture, and not the other.

Q.17. If one who is under the age of thirty years, and brought up in Husbandry, or a Maid-servant, or brought up in any of the Arts or Trades mentioned in the Statute of 5 Eliz. cap.4. and not enabled according to that Statute, to live at his or her own hand, shall be warned by two Justices of the Peace to put him; or her self in service
by

by a day prescribed by them, and shall not do the same accordingly, but shall after continue living at his or her own hand, what course shall be taken with such a person, and how punished?

Resol. Such persons being out of service, and not having visible means of their own, to maintain themselves without their labour, and refusing to serve as an hired servant by the year, may be bound over to the next Sessions or Assises, and to be of the good behaviour in the mean time, or may be sent to the House of Correction.

Q.18. Whether the Tax for the relief of the Poor, upon the Statute of 43 *Eliz.* shall be made by ability or occupation of lands, or both, or whether the visible ability in the Parish where he lives, or general ability wheresoever, and whether his Rent received within the Parish where he lives shall be accounted visible ability, and whether he shall be taxed of them onely, and for any Rents received from other Parishioners; and what shall be said visible ability?

Resol. The Land within each Parish is to be taxed to the charges in the first place equally and indifferently, but there may be an addition for the personal visible ability of the Parishioner within the Parish according to good discretion, wherein if there be any mistaking, the Sessions, &c. or the Justice must judge between them.

Q.19. Whether Shops, Salt-pits, Sheds, profits of a Market, &c. be taxable to the Poor as well as Lands, Cole-mines, &c.

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expressed in the Statute 43 *Elix.*

Resol. All things which are real, and a yearly Revenue, must be taxed to the Poor.

Q.20. Whether the Tax for the County-stock, Gaol, and House of Correction is to be made by the Statute of 14 *Elix. c.43.* by ability, and upon the Inhabitants of the Parish onely, or upon them, or the Occupiers of Lands, dwelling in that Parish: or whether such as occupy Lands in that Parish, and dwell in another Parish shall be taxed?

Resol. If the Statute in particular Cases give no special direction, it is good discretion to go according to the Rate of Taxation for the Poor: but when the Statutes themselves give directions, follow that.

Q.21. Whether any Taxes ought to be made for the charges that Pety Constables and Borsholders are at in conveying Rogues from Parish to Parish, and relieving of them, and how to be rated?

Resol. It is fit to relieve the Constable and Tithing-man, in such sort as it hath been used in the several places where they live.

Q.22. Whether a Justice of Peace may discharge a Servant being with childe from her Service, allowing that as a reasonable cause that she is thereby made unable to do the service, which otherwise she might have done, and if he may discharge her, whether that Parish shall provide for her till her delivery, if she cannot provide for her self; and so also if her time be expired before her
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delivery, who shall provide for her after her time ended?

Resol. If a Woman being with childe procure her self to be retained with a Master who knoweth nothing thereof, is a good cause to discharge her from his service. And if she be begotten with childe during her service, it is all one, but the Master in neither case must turn away such a Servant of his own authority. But if her term be ended, or she lawfully discharged, the Master is not bound to provide for her, but it is a misfortune fallen upon the Parish, which they must bear, as in other cases of casual impotency.

Q.23. Whether being delivered of a Bastard childe in one Parish, and goeth into another with her Childe; and becomes Vagrant, and so is sent to the place of her birth: her Bastard-childe being under the age of seven years, shall be settled with the Mother, and there maintained if the Mother be not able, nor the reputed Father known, nor found, whether it shall be sent to the place of its birth, or being settled with the Mother, whether the Parish where it was born shall be ordered by the two next Justices to pay a weekly sum towards the maintenance of it?

Resol. The Bastard childe must be placed with the Mother, so long as it is within the quality and condition of a Nurse-childe, which shall be till seven years of age; and then it is fit to be sent to the place of its birth to be provided for, the Mother or reputed

puted Father not being able. And the Parish where the Childe is born shall not be forced to contribute to the charge, as long as the Mother lives, and the Childe be under seven years old.

Q 24. A Man with his Wife and Children takes an house in one Parish, for a year; and before the end of his term is unlawfully put out of possession, and after taketh part of an house as an In-mate in another Parish, from whence he is also put out, and then not being able to get any dwelling, they come to ly in a Barn in a third Parish where the Husband falleth sick, and the Wife is delivered of another Childe, where ought these to be settled?

Resol. If a man or woman having house or habitation in one Parish be thrust out, this is an illegal unsetting which the Law forbiddeth, for none must be enforced to turn Vagranr, and such one must be returned to the place where he or she was last lawfully settled, and the Childe also born in the time of this distraction.

Q 25. Whether an Apprentice put out by the Church wardens, &c. according to the Statute, to a Master in another Parish, if his Master dy and leave no Executor or Administrator fit to keep an Apprentice, or able to place him: He shall be provided for in the Parish where he was Apprentice, or shall be sent back to the Parish from whence he was put out?

Resol. Servants and Apprentices are by Law settled in that Parish, and if they become

come impotent there, the Parish must abide the adventure after their term or time of service be lawfully ended.

Q.26. What is accounted a lawful settling in a Parish, and what not?

Resol. This is too general a Question to receive a perfect Answer to every particular case which may happen: but generally this is to be observed, that the Law unsettlth none who are lawfully settled; nor permits it to be done by practice, or compulsion, and every one who is settled is a native Housholder, Sojourner; an Apprentice or Servant for a Moneth at the least, without a just Complaint made to remove him or her, shall be held to be settled.

Q.27. A Rogue is taken at *C.* and will not confess the place of his birth; neither doth it appear otherwise but that he confesseth the last place of his habitation to be at *S.* hereupon he is whipped and sent to *S.* at his coming to *S.* the place of his birth is there known by some to be at *W.* and thereupon the Rogue confesseth it to be so: whether he might without any new Vagrancy be sent to *W.*?

Resol. In this case it is fit to send such a Rogue to the place of his birth: for this is but a mis-taking, and no legal settling.

Q.28. If an Indictment be preferred to the Grand Jury of the Quarter Sessions of the Peace against one for Murder, Manslaughter, for Robbery, Felony, or Petty Larceny, and *Ignoramus* found thereupon, whether the said Sessions may deliver the party by Proclamation or not?

Resol.

Resol. Not by Proclamation at all, but for Pety Larcenies, and other Pety Felonies, in discretion the Gaol may be delivered of them.

Q.29. If a Constable be chosen and refuseth to take his Oath, what shall be done, and whether a Constable may make a Deputy, and by what means?

Resol. The refusal or neglect to take Oath in such case is a contempt worthy of punishment, and thereupon to fine, and imprison him, and the making of a Deputy is rather by toleration, than by Law.

Q.30. If a Constable dy or remove out of the Parish where, &c. how is his place to be supplied?

Resol. By the Lord of the Leet, if that time fall near, otherwise by the Sessions, but if that be too far off, then by the next Justices.

Q.31. If a poor weak man be chosen Constable or Tithing-man, and be unfit for the place, how may he be removed, and a fit man sworn in his room?

Resol. The Justices of Peace must help this, and if the Lord of the Leet have power to choose a Constable or Tithing-man, and perform so ill, it is a just cause to seise his Liberty.

Q.32. If a Nurse-childe, a Scholar at a Grammar-School, or in the University, prove to be impotent by sickness, lameness, lunacy, or discovery of ideocy, &c. how such persons shall be disposed?

Resol. A Nurse-childe, or a Scholar at the

the Grammar-School, or at the University, or persons sent to Common Gaol, Hospital, or Houses of Correction, are not to be esteemed as persons to be settled there, no more than Travellers in their Inns, but their settling is where their Parents are settled; and Children born in common Gaols, and Houses of Correction, their Parents being Prisoners, are to be maintained at the charge of the County.

Q.33. What proportion Parsonages, or Tithes shall bear to the Taxation of the Poor of the Parish?

Resol. The Parson or Vicar presentative, shall according to the reasonable value of his Parsonage, having consideration to the just Deductions.

Q.34. Whether for placing the Poor of the Parish, not to be removed by consent of the Parish, these poor men may not be placed as In-mates for a time?

Resol. They may by express words of the Statute of the 43 of *Elizabeth*.

Q.35. If a Parishioner or Owner within a Parish, do bring into the Parish without the consent of the Parish, a stranger of another Parish, which is, or apparently is like to be burthensom unto the Parish, how they may ease themselves?

Resol. By taking such a one to the charge of the Rates of the Poor, not onely having respect to his ability or the Land he occupies, but according to the damage and danger he bringeth to the Parish by his folly.

Q.36. For warding in the day-time for ap-

apprehending of Rogues, whether the Constable may not enlarge it to a farther time?

Resol. Warding in the day-time is of great use, and must be left to the discretion of the Constables, or direction of the Justices to vary according to the occasion.

Q. 37. Whether Ale houses ought to be allowed onely in thorow-fare Towns, and others in other places to be restrained onely to sell to the Poor out of doors.

Resol. The Justices shall do very well to allow none but in places very fit for their situation and uses, and to moderate the number.

Q. 38. A man for his quality otherwise fit to be a Constable, or of other Office of that nature, procures himself to be the Kings Servant Extraordinary, and by that means would excuse himself to serve the Countrey?

Resol. A Servant Extraordinary may well perform his Ordinary Service in the Countrey according to his quality.

The Justices opinion touching the Commissions by which the Justices sit at New gate.

THE Justices at New-gate sit by virtue of two Commissions, viz. Gaol-delivery, and Oyer and Determiner.

By the Commission of Gaol-delivery they may try all Prisoners in the Gaol or by Bail, or such as being indicted will render themselves, generally for all Felonies: and also

for such other offences as are particularly assigned to them by Statute.

The Statute of 4 *Eliz. cap. 2.* doth give them power to receive Indictments against Prisoners or such as are upon Bail, and to proceed to try the same, viz. Indictments taken before the Justices of the Peace, and by enquiry thereof all Indictments before Coroners, 3 *Mar Bro. Commission. omnium* 24. faith, that the Commission is *ad deliberand. Gaol. de Prison in eisdem existent.* But they cannot take Indictments as Justices of Gaol-delivery, but being Justices of the Peace, they may take Indictments against Prisoners, but not against them that be at large: for as much as power is given them, consequently they must have means to do so, which is by Indictments. *Id. quarend.*

Howbeit it is clear, that they may inquire of many offences, and take Indictments in such Cases where power by the Statute is given to the Justices of Gaol-delivery, in such Cases where they have authority by Law or Statute there the Title of Indictments is, that *Ad gaolam deliberationem tent.* before the Commissioners of Gaol-delivery, *I. S.* was indicted, and the Record must be made so.

And whereas by the Statute of 4 *Eliz. cap. 2.* Indictments taken before Justices of Peace or Coroners, or any other against any Prisoners, when the Entry of the Indictments is returned taken, *Memorand. quod ad generalem Sessionem sent.* before A. B. C. Justices *ad pacem in Com. Middlesex or London,*

don, I. S. was indicted, and then tried before Justices of Gaol-delivery, and by virtue of the said Statute, Indictments taken before Justices of the Peace of London, or Middlesex, are tried before the Justices of Gaol-delivery.

The Commissioners of Oyer and Terminer is *Ad triand. inquirend. audiend. & determinand.* They may inquire of all offences mentioned in the Commission, albeit the offenders be at large, but they cannot try Prisoners upon Indictments taken before any other than themselves, as the Justices of Gaol-delivery may by the aforesaid Statute, unless there be a special Commission made, as it was in the Case of the Earl of Leicester, mentioned in *Plow. Com.* for the ordinary Commissioner of Oyer and Terminer is *Ad inquirend. audiend. & determinand.* there ore they cannot determine of things, unless they made inquiry first, and on the other side also the Justices of Gaol-delivery may try Indictments taken before Justices of the Peace, yet if one be indicted before Commissioners of Oyer and Terminer, the Justices of Gaol-delivery cannot try the same, because the Records of the Commission of Oyer and Terminer are to be returned in the Kings Bench, 44 E.3.31.

The Commission and the Records of the proceedings before the Justices of Gaol-delivery, are to be returned to the *Custos Rotulorum* of the County, when the same persons are Justices of Gaol-delivery, and of Oyer and Terminer, they may sit the same

day and place, and inquire by the same Jury, but the Entry of the Records must be several, according as the Indictment is.

At the Assises in the County, the Justices have their several power as the Justices of Gaol-delivery, Oyer and Terminer, and Justices of Peace.

But when the Records are made up, they must be according to the power they made Election to proceed upon.

This is the regular and legal course. But the Clerks of the Assises promiscuously make Entry thereof; but if a Writ of Error be brought, they must certify according to Law, or else it will be erroneous, and so upon a *Certiorari*.

The Sessions of London may be begun at the Guild-hall, and then adjourned to Newgate: If some Indictments be at Guild-hall, then those must be so certified: if others at Newgate, then the Adjournment must be mentioned, and that the Indictment was then taken.

Note that the Trial of Indictments taken before Justices of the Peace of London, cannot be tried at Newgate, as in nature of a Trial before Justices of Peace at London, for many of the Commissioners for Gaol-delivery, are not Justices of the Peace for London, but in such Cases the Trial must be before the Justices of Gaol-delivery: as upon Indictments taken before the Justices of the Peace of London; as in the case of Indictments taken before the Justices of the Peace of *Middlesex*.

But if Indictments at *New-gate* be originally taken before them, as Justices of Gaol-delivery, then it is inquirable how the Jury sworn, and impannelled to inquire at the Sessions of the Peace for *London* or *Middlesex*, do serve to present Indictments before the Justices of Gaol-delivery at *New-gate*, unless the Custom and Usage will warrant, the two several Juries sworn at the Sessions of the Peace for *London*, or *Middlesex*, are also by the same Oath and impannelling to serve for the Grand Jury for the Commission of Gaol-delivery, and *Oyer and Terminer*.

Upon conference with Mr. *Keeling* and the Clerks for *New-gate* of *London* and *Middlesex*, and the Clerks of Assises, and view of the several Entries, a more mature and certain resolution may be given, this being in haste, and without such considerations as were requisite.

Cases and Resolutions upon the Statutes of 18 *Eliz. cap. 3.* touching Bastard-children. And upon 43 *Eliz. cap. 2.* concerning the Poor, and provision for them.

Hamond's Case Mich. 3 Car. King's Bench.

Bastard.

HAmond having got a Childe, the Examination thereof was referred to the two next Justices according to the Statute :

upon which the Justices make an Order, which *Hamond* refused to perform; thereupon they cause him to enter into Bond to appear at next Sessions, where he appeared, the Justices there made another Order; and because he refused to perform this, they committed him to Prison. Resolved, the Imprisonment was illegal, being not warranted by the Statute, but they ought to have proceeded against him upon his Bond.

By *Hide* Chief Justice, the Justices ought not to commit for not performing their Order of Quarter Sessions, where they alter the former Order made by the Justices who had first the Examination; for by the second Order the first was made null.

Concerning providing for Bastard-children

Smith's Case, Mich 5 Car. R. B. R.

IT appeared by proof before two Justices, that *Smith* was the reputed Father of a Bastard-child, and the Justices made an Order for mainenance of the Childe, and for discharge of the Parish according to Law; and afterwards committed him for not performing the Order: Resolved, the Commitment was void, and that the Justices should have taken Bond of him to appear at next Sessions.

The Case was further:

Sir *Henry Pool* and Doctor *Standard* being the two next Justices, did examine this matter, upon which it then appeared that one *Field* was the reputed Father, and made their Order against *Field*, that he should maintain the Child, discharge the Parish, and enter into Bond for his Appearance at the next Quarter Sessions, and to abide their Order there made: He refused to enter into Bond, but appeared at the Sessions, and there shewed that *Smith* was the reputed Father; the former Order was certified, but the Justices did nothing upon it, but granted a new Reference unto Doctor *Standard* and Master *Gregory*, Sir *Henry Pool* being gone out of the Countrey: And they made the last Order contrary to the former; and by this they charged *Smith* as a reputed Father. Resolved, that the Justices at their next Quarter Sessions ought to have made a final Order, or to have affirmed or disallowed the former Order. And then afterwards have granted a Reference to the same next Justices which made the first Order, to consider better of it, and of the proof; and this had been according to Law.

Resolved, That after an Appeal to the Sessions, and the Justices there do repeal the first Order, the matter then is as *res integra* before them; and they may then grant a Reference to the two next Justices.

Nota. That the Recognizance thought to

be in the disjunctive, viz. To perform the Order by them made, or to appear at the next Quarter Sessions, and to abide the Order there.

Nota. One Justice of Peace by his Warrant may commit, but the *Mittimus* being shewed, and it not pursuing the Statute, and the Recognizance not being in the disjunctive, *Smith* was bailed to appear at next Sessions, &c.

Resolved, The Reference by the Justices at the Sessions, before they had allowed or disallowed the first Order, was illegal.

Bomber against Panter, Pasch. 8 Car. B. R.

Resolved, That upon the Statute of 18 *Eliz. c. 3.* that the Justices of Peace at their Sessions, nor the Justices of Assises, have power to meddle with Bastard-children but upon an Appeal and settling. But this is to be done by the two next Justices.

At Salop Assise, 19 Martii 7 Car. 1621.

This Question was propounded to Sir *William Jones* Knight, Justice of Assise, by a Justice of Peace, viz. upon the Statute of 18 *Eliz. cap. 3.* & 7 *Jac. cap. 4.* touching Bastard-children, by the first Statute punishment is inflicted; and by the second, if she offend the second time, she is to be sent to the House of Correction, &c. Upon this, question was; One had a Bastard-child, but she was not questioned for it, no proceedings

ceedings being had against her upon the Statute of 18 Eliz. 3. Afterwards she had a second Bastard; whether she shall be proceeded against upon the Statute of 7 Jac. 4. for the second offence, or whether the second offence shall not be taken for the first.

Resolved, She shall not be punished upon the Statute of 7 Jac. as for her second offence, unless she had been before questioned and punished for her first offence; but this second offence shall be now taken to be as her first offence, and so is to be punished for the same according to Law.

Town of *Tewksbury* against the Town of
Twynning at Assises, 9 Julij
8 Caroli, 1632.

A Servant-maid dwelling in *Twynning*, was got with childe, and being near her time was conveyed by practice into an out house in *Tewksbury*, where the Childe was born; afterward *Twynning* gave her relief, and the Minister of *Twynning* Christened her Childe, and as soon as she was able to remove, they of *Twynning* gave her and her Childe relief for two years; afterwards the Mother being sick, they sent her away with her Childe to *Longden* in *Com. Wigorn.* where the Mother died: then they of *Longden* sent the Childe unto *Twynning*, and they of *Twynning* sent the Childe (being under the age of three years) unto *Tewksbury*, and they sent it back to *Twynning*.

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Resolved, The Childe regularly is to be kept where it was born, if no practice was used to have it born here, but if by practice, then it is to be kept by the Parish where she did dwell, and where she was got with childe, and which used practice to have the Childe born in another Parish, which is the Parrish of Twynning, and so was ordered: referred to Justices of Peace to examine the practice.

Ad Assisas, 20 Julii, 13 Car. 1637. at Glouc.

Anne Tarling having a Bastard-childe, upon complaint made thereof to the Sessions, it was referred to the two next Justices to examine and order; who did make an Order against *John Wood* to be the reputed Father, and ordered him to allow one shilling four pence weekly, &c. *Wood* appeals to the Sessions, where the said Order was disallowed, and one *William Cole* charged to be the reputed Father: *Jones* Justice without examining the cause, confirmed the last Order made at Sessions, which was final, and no Appeal to be admitted against it.

And in a *Lincolnshire* Cause, one *Pridgeon* being questioned, and found by two Justices to be the reputed Father of a Bastard-childe, and so made an Order against him for Allowance, &c.

Afterwards he appeals to the Sessions, where the said *Pridgeon* was discharged, and another was found to be the reputed Father, and an Order made against him.

After-

Afterwards at another Sessions of the Peace, upon a Re-examination another Order was made against the last Order, whereby *Pridgeon* was found again to be the reputed Father, and so ordered to maintain the Child. *Pridgeon* appeals to the Judges of the King's Bench. Resolved, That *Pridgeon* shall be freed from the second Order at Sessions, it being illegal. And the first Order made by the Quarter Sessions upon Appeal to them to stand in force, and no Appeal to be admitted against it, the same being final, and not to be altered by the Judges of Assize. And so it was resolved by the Judges of the King's Bench.

And so upon the Statute 43 *Eliz. c.4.* for charitable uses, if the Commissioners make an Order or Decree in the Case, and upon Appeal to the Lord Keeper, and Exceptions put in, if upon that the Decree made by the Commissioners be confirmed by the Lord Keeper, this Decree is by this made to be final, and no subsequent Appeal to be admitted.

Cases concerning provision for poor people.

Reves Case, Mich. 7 Car. R. B. R. Stat.
43 *Eliz. c.2.*

Poor.

R *Fue* was brought to the Bar by *Habeas Corpus*, being committed upon the Statute of 43 *Eliz. cap.2.* for that he being the
re-

reputed Father of Ben: Gregory a poor Childe, who was maintained by the Parish of St. Giles in the Fields, and he being a man of ability, refused to maintain the Childe, or to finde Sureties for his Appearance at the next Sessions. Reve moved that the Commitment was illegal being grounded upon the said Statute, wherein is this Clause, *That the Father and Grand father, Mother and Grand-mother, the Children and Grand-children of every poor person not able to work (they being of ability) shall pay such Rates, and in such wise as the Justices of that County where such person dwells, at their next Quarter Sessions shall assess, upon pain of forfeiting twenty shillings per mensem. Wherein there is no such person taken notice of as the reputed Father of a Bastard, which is filius populi.*

It also appeared that Reve dwelt in Suffolk, and coming to London about Law-sures was taken by a Warrant of a Justice of Peace of Middlesex.

Resolved, The granting the Warrant was illegal, and all the proceedings in *Middlesex coram non iudice*.

Nor have the Justices any power at their Sessions in *Middlesex* to make any Order, the party living in another County. And he is not to be committed untill an Order made, and a refusal to pay the twenty shillings a month, and if he refuse this, then (for want of Discreetness) to be committed, and not before.

By Jones and Croke Justices, it is reasonable

ble that he should contribute to the maintenance of the Child he being of ability, but this is not the way to compell him. The Justices in Suffolke may make an Order in it, and so cause the Money to be sent up.

Draper and Townjof Glenfield in Corn. Leic.

At Summer Assizes before *Hutton and Croke* Justices was this Case; A Grand-mother being a person of ability had a poor Grand-child relieved by the said Parish, the Grand-mother married with *Draper*; the Question was, whether *Draper* should be taken to be a Grand-father within the Statute of 43 *Eliz.* c 2. and so liable to maintain the Child.

Resolved, That he shall, for that the Wife after her Marriage had no ability at all, her Estate being a Gift in Law to the Husband.

By *Croke*. Where the Grand-mother was of good ability at the time of the Marriage, it is good reason the Husband should be charged, but not otherwise.

Mich. 7 Car. Regis. Gerrard's Case.

Gerrard married the Grand-mother being a poor Widow, but had no means nor advancement at all by her, the Husband also had but small Estate; but having been married eighteen or nineteen years by industry of the Wife are come to be of ability: And whether he should provide for a poor

poor Grand-childe of his Wives was the Question.

Croke Justice. If Grand-father and Grand-mother have no Estate they shall not be charged. Secondly, if the Grand-mother have no means, and she afterwards marry with one that hath, he shall not be charged with keeping this Childe.

But if the Husband have sufficient means with the Grand-mother in Marriage, there he shall be charged during the life of the Grand-mother and no longer.

If Land descend to the Grand-mother after Marriage, and the Husband enjoys it in her right, here he shall be charged with the Childe.

When the Wife hath ability at the time of the Marriage he shall be charged, because by the Marriage he hath gotten the means which the Grand-mother had, out of which the Childe is to be maintained, and so *transit cum onere*.

Whitlock Justice. The making the Order against the Grand-father in this Case was well, he being become of ability by the industry of his Wife. *Croke contra.* The Justices differing in opinion, ordered a Trial at Law.

Town of Kimalton against *Laystas*, 7 Car. at Hereford Assizes, 1631. Stat.

43 *Elix.* cap. 2.

Winde and his Wife dwelt at *Laystas* five years, and after came into *Kimalton*, and did

the did there rent a house for a year, and having Children, the Town fearing they would be chargeable to them, they procure a Justice of Peace to charge the Landlord to warn them out of his house, or put in Security to save the Town harmless: The Landlord put them out at the years end, and let his house to another.

Winde complains to the Justices, who order that the Town of Kimalton should provide a house for him and his Wife, paying a yearly Rent, or else that the Overseers of the Poor do provide for them, which they refuse to do; whereupon Winde complains to the Judges of Assise.

Resolved by Whirlock Justice, that the Order made by the Justices of the Peace was against Law, because that Winde was neither poor nor impotent, he being able to work, and had means, and paid his Rent: But Winde is to provide for himself where he can get a house; and he might when he pleased go again to *Laystas* where he formerly lived and had means.

Ad Assisas 19 Martii, 7 Car. Regis, 1631. at Salop, Stat. 43 Eliz. c.2.

Margaret Brown was begot with childe by one *Gough*, the Childe born in *Drayton in Com. Salop*, eleven years since, and *Gough* the reputed Father took the Childe from the Mother, and placed him at nurse elsewhere, and after marries another Woman, and dwells with her at *St. Chad*, the Bastard-childe.

childe dwelt with him; afterwards *Gow* the reputed Father dies, leaving his Wife and divers Children, and the said Bastard childe all poor and maintained by the Parish.

The Mother of the Bastard hath been all this while in service, but is a simple woman yet able to work, and had three pounds left by Friends, but not yet come into her hands.

Whether this Bastard shall be sent to the Town of *Salop* where he lived for ten years, or at *Drayton* the place of his birth, or to his Mother who is not able to maintain him.

Resolved by *Jones* and *Whitlock* Justices, that this Bastard-childe is to be sent to his Mother to be kept by her if she be able, if she be not, then to the Town of *Salop*, in regard he had been there formerly settled with his reputed Father, and because it is the place of last settling he being there for ten years, and the Law respects the place of last settling, as well as place of birth.

At the Assises, 28 Julii, 5 Car. 1629. Stat. 43 Eliz. cap. 2.

Foroth Clavely with a Childe under the age of seven years going about as a Wanderer, came to *Arlee* in *Com. W.* and there desired a Warrant to be conveyed to *Egleshal* in *Com. S.* where the Childe was born: The Constable of *Arlee* made her such a Pass, and delivered her to the Constable

stable of *Rippesford*, who delivered her to the Constable of *B. in Com. W.* where by the way she died; they sent the Childe to *Rippesford*, they send it to *Arlee*, *Arlee* sent it back to *Rippesford*.

Whether the Parish where the Mother died, or where the Childe was born was to keep the Childe?

Another Case, being a Wanderer with three Children, born in three several Parishes, came with them unto *Dale* in the Parish of *Sale* unto one *Burton* her Sister, where she died, and left the three Children there.

By *Jones* and *Whitlock* Justices, &c. That the Children ought to be kept and provided for by the several Parishes where they were born, and not in the Parish where the Mother died *in transitu*, and was so ordered accordingly; because the place of Birth is a settling of these Children in a place certain; and the wandering of the Mother afterwards with them doth not alter the Case.

Resolved also, that the place of birth, or place of last habitation, if the same be known, are in judgement of Law said to be the places of settling. So that if a man be born in one Parish, and afterward is an Inhabitant and Servant in another Parish, and after this becomes a Wanderer, he is here to be sent to the place of last settling, to be there kept and provided for.

Nota. These Children in the two last Cases were sent to the places of their
G g births

births as poor, not as Wanderers or Vagabonds.

Note also, that the Statute of 39 *Eliz.* 4. for punishing Rogues, that the last Proviso therein shall not extend to Children under the age of seven years, for such shall not be accounted Wanderers within this Statute.

At Lincoln Assises, 11 Martii, 9 Caroli Regis, 1633.

Upon complaint by Sir Anthony Tryby, that the Assessments for the Poor by the Town of Boston and Overseers were unequal.

By Hutton and Croke Justices; such Assessments ought to be made according to the visible Estate of Inhabitants there, both real and personal there, and not for what Estate he hath in other Parishes.

He also complained that he had divers Tenants there, and that they taxed both him and his Tenants.

Resolved, They are by Statute 43 *Eliz.* 2. to assess the Occupiers of Land, and not the Lessor who receives the Rent, the Occupier being by Law charged to pay that Settlement.

At Worcester Assises, 11 Martii, 14. Car. Regis, 1638. Stat. 43 Eliz. c. 2.

Inter Vill. de Suckley, & Vill. de Whitborn.

William Chapel a Creeple born in Whitborn.

born, twenty years since he went from thence and dwelt in *Suckley*, and paid Rent for a house. And afterwards he came to the Town of *Lusson*, and there continued twenty weeks, and wrought as a Labourer in a Quarrey of Stone, and by a fall of a stone his back was broken, and so he was made impotent, and there was taken as a Vagrant wandring and begging; upon this he was sent to *Whitborn* where he was born, but, they refused to receive him.

By *Jones Justice*: If he did beg and wander at *Lusson*, he is then by the Law to be sent to *Whitborn* where he was born, and they ought to provide for him as one of their Poor.

Note. At this time it was also resolved, That if one great with Childe be sent to the House of Correction, and there she is delivered, the Childe shall be sent to the Parish from whence the Mother came, there to be provided for, it being the place where she was last settled.

Nota. It was also resolved that a Rogue ought not to be sent to the House of Correction, but he is to be whipt and sent to the place where he was last settled, if the same be known, otherwise to the place of his birth.

House of Correction.

But the House of Correction is for the Poor of a Parish who refuse to work, there they are to be whipt and set on work.

Resolutions concerning poor People.

1. If there be but one Church-warden in the Parish, he sufficeth with the other Overseers.

2. If the Parents be able to work, and may have work, they are to finde their Children by their labour, and not the Parish: but if they be over-burdened with Children, it shall be a very good way to procure some of them to be placed Apprentices according to the Statute; and such Apprentices would be put out especially to Husbandry and Hofwifry.

3. The Father and Grand-father, Mother, and Grand mother, Children and Grand-children, (of every poor impotent person, or not able to work) being of sufficient ability shall relieve such poor persons in such manner as the Justices of Peace for that County where such sufficient person dwells at their General Sessions shall assess by Statute 43 Eliz. 2.

4. Young Children whose Parents are dead are to be set on work, relieved and maintained at the charge of the Town where they were dwelling at the time of the death of their Parents, and are not to be sent to the place of their Birth. And if the Parents were not Rogues we may make the Children Rogues, (except they wander abroad and beg) by Fleming Ch. Justice, 11 Jac. B.

5. If any not being Rogues shall travel

with

with their Children through a Town, and the Father or Mother die, or run away, that Town is not bound to keep their Children, nor to send them away, but onely in charity, except they become wandering Beggars.

6. Such persons as be of any Parish and have able bodies, if they refuse to work at such Wages as is taxed (or commonly given) are to be sent to the House of Correction, and not to their place of Birth or last dwelling by the space of a year: But if they have any lawful means to live by, though they refuse to work, yet are they not to be sent to the House of Correction.

7. None may be suffered to take relief at Begging, any mans door, though within the same Parish, unless it be by Order of the Overseers; neither to beg in High-ways, though in their own Parish.

8. No man is to be put out of the Town where he dwells, nor to be sent to their place of birth or last habitation but a vagrant Rogue. Nor to be found or maintained by the Town, unless the party be impotent, but ought to set themselves to labour. And so of them that have or shall have houses, when their Estates be expired, and Servants whose times of service are ended, though they cannot get houses, for they must provide themselves houses a new, if they be not impotent; if they are impotent, that Town must relieve them; if able, they are there to be setled to work: and if such person shall wander abroad

begging out of that Parish, then he shall be sent as a Vagabond from the place where he shall be taken begging to the place of his birth.

9. Such as shall remove or put any out of their Parish that be not to be put out by Law; this is against Statute for relief of Poor, and finable; and if any have been so sent, they may be sent back again.

Licence.

10. Two Justices may licence poor diseased People to travel to Bathes, so as they beg not.

11. But no Justice or Justices of Peace may or can in any case licence any poor man to wander or beg at all, nor may licence any poor to travel, but persons shipwreckt, poor Souldiers and Mariners to pass the next direct way to the place of their birth, and such like.

Labourers may be licenced by one Justice in Harvest-time to go from one Countrey to another to work, but not to beg.

Note. All Rogues are to be conveyed to the place of their Birth by the Constable of every Parish from Constable to Constable the next straight way. And therefore if the Constable will not receive a Rogue to convey him to the place where he was born (or dwelt) this is a Forfeiture of five pound by such Officer, and to be bound to good behaviour.

And the Church-wardens or Over-seers refusing to receive such a Rogue where he was born forfeit five pound, and to be bound to good behaviour.

A Justice

A Justice of Peace upon his own discretion may binde the reputed Father of a Bastard-child to the good behaviour, to the end he may be forth coming when the Childe shall be born; the like may be done after the birth of the Childe; *Lamb* 122.

By Statute of 18 *Eliz* c.3. two next Justices (*Quorum unus*) upon Examination of Circumstances shall and may take order as well for relief of the Parish and keeping of the Childe, by chaeging the Mother or reputed Father with payment of the Money or other relief, as also for punishment of them; in which cases the Mother may be examined upon Oath concerning the reputed Father, the time, and other circumstances.

But such Bastard-child must be such as is or like to be chargeable to the Parish.

By Statute 7 *Jac.* the Justice shall commit such lewd women to the House of Correction to be punished. And by Statute 18 *Eliz*.3. the Justice may punish the Mother by corporal punishment and then send her to the House of Correction, *Quare si non bis puniri.*

Every lewd Woman which shall have a Bastard, which may be chargeable to the Parish the Justices (*viz.* the two next Justices) shall commit her unto the House of Correction there to be set on work, and to be punished for one year. And for her second offence she is to be committed again, and kept until she finde Sureties for her good behaviour, and not to offend so again.

Stat. 7 *Jac.* c.4.

G g 4

Nota.

Nota. The Childe must be born and living, else it is not like to be chargeable to the Parish, otherwise the Mother is not to be sent to the House of Correction.

But whether the Bastard-childe is to be sent with the Mother to the House of Correction, or remain in the Town where it was born, and there to be relieved by the work of the Mother, or according to the Statute of 18 *Eliz.* 3. by the reputed Father. *Quare* though the common practice hath been to send the Childe with the Mother, which the said Statutes do not warrant.

Of providing habitation for poor people.

By the Statute 43 *Eliz.* c. 2. either the Church-wardens and Overseers, or the greatest part of them, by the leave of the Lord of the Walle in writing under his Hand and Seal, or by Order of the Justices at their General Quarter Sessions by leave of the Lord as aforesaid, may erect convenient houses of habitation for poor impotent people, and also to place Inmates or more Families than one in one Cottage or house.

Note this extends onely to poor and impotent. 2. Not to any common Herdman or Shepherd, *Coke 2 Inst.* 737.

The manner of proceedings by a Justice of Peace in Forcible Entries.

THe Justice of Peace ought not to stay at all, nor take notice of right or wrong concerning the Title of him that enters by force; for Statute of 8 H. 6. c. 9. permits no Forcible Entries nor Detainings, but onely where three years Possession have gone before. And this may be viewed, and force removed by one Justice, by the words of that Statute, & *Pult. de pace, fol. 36. B.*

Such persons as the Justice findes to continue the force at his coming to view the same he ought to commit them to the Gaol, as convict of that offence upon his own view, but the force must be recorded, *Lamb 158. Cook lib 8 fol. 120.*

If the force be found by a Jury, then may the Justice alone by himself, or by his Precept to the Sheriff under the Teste of himself alone may restore that party to his Possession.

Nota The Justice upon view may remove the force, and commit the party, but cannot award restitution, unless the force be first found by a Jury.

But though he cannot give restitution when he hath removed the force upon his view, yet the force being removed it is to be presumed that the parties that were put out of possession may then again enter peaceable, and keep the same.

Restitution upon Indictments for a Forcible

Restitu-
tion to
whom it
extends.

ble Entries and Detainings by force of Sta-
tute 21 Jac. 15. extends to Tenant for years,
Tenants by *Elegit*; Copy-holders, and Te-
nants by Statute as well as to Free-hold-
ers. And in stead of the word [*disseisivit*]
in the Indictment it shall be said, *Ejecit, ex-
pulsit, amovit & detinuit.* Cook 4. Inst. 476.

What Ju-
stices have
power in
Forcible
Entries.

1. The Judges or Justices of the King's
Bench, 4 H. 7. 18. l. 7. Ed. 4. 18.

2. Justices of Peace by Statute 8 H. 6. c. 9.
Cook lib. 9. 118. b. 2 H. 8. Kelway 159. And
not Justices of Oyer and Terminer, nor any
other Justices, Cook 4. Inst. fol. 176.

By Statute 5 R. 2. 2 the Justices are to
take the power of the County, and if they
find a Force they are to enter and commit
the party to the next Gaol, where he is to
abide until by the Record of the same
Justices or Justice, until he make Fine and
Ransom. And in the same manner it shall
be done to them that make Forcible En-
tries into Livings and Benefices, or Offices
of holy Church.

5 R. 2. 7.
*pro manu-
forti ingres-
sione in
terram ubi
ingressus
non datur
per legem,*
be punish-
ed by Im-
prison-
ment and
Fine.

The defects of this Statute : 1. No re-
medy for a peaceable Entry and Detainer
with force. 2. Where an Entry was with
force, and removed before coming of the
Justices. And for Restitution, all this is pro-
vided for by 28 H. 6. 9. And Restitution to
Tenant for years, by 21 Jac. 15. and by 31
Eliz. 11. No Restitution upon Indictment
of Forcible Entry where the party hath
been three years in quiet possession.

Proceedings upon Forcible Entries and Detainers.

The manner of calling a private Sessions.

A Precept to the Sheriff.

A. G. Armiger unus Justic' Dom' Regis ad pacem in Com. L. conservand. assign. &c. Vic. ejusdem Com. salutem ex parte dicti Dom. Regis tibi mando & precipio qd. venire fac. coram me apud H. in Com. predicto 10 die instantis Maii xxiv. probos & legales homines de viceneto de B. in Com. predicto quorum quilibet habeat quadraginta solidor. terr. tenor. vel reddit per annum ad minus ult. repriss. ad inquirend super sacrament. suum pro dict. Dom. Rege de quodam ingressu pacifico fact. in unum messuagium cujusdem E. I. vid. apud D. in Com. predicto & de manus forti detentione ejusdem Messuagii contra formam statuti Dom. Henrici nuper Reg. Angl. sexti Anno Regni sui octavo edit & qd' super quemlibet Fur. parte in hac parte impanelland. xxi solid. de exit. ad prefat. diem retornand. & hoc nulla. n. omittas sub pena xxi librarum Teste me prefat. A. G. apud L. nono die Maii Anno regni Domini nostri caroli, &c.

Upon a peaceable Entry and forcible Detainer.

Note this must be under the Hand and Seal of the Justice.

Linc. ff Inquisitio indentata e pta apud privat. Session. pacis Domini Regis text. apud H. in

The Inquisition thereupon

H. in Com. L. 10. die Maii anno Regni Dom. nostri Caroli Dei gratiâ Angl. Scot. Franc. & Hibern. Regis fidei defensor. &c. x. contra me A. C. uno Justic. dicti Domini Regis ad pacem in Com. predict. conservand. assign. per sacrum. Marci Gallop, Thom. Jul. (insert all the Jurors names) proborum & legalium hominum Com. predict. qui jurati & onerati ad inquirend. predicto Domino Rege de pacific. ingressu in uno messuagio cum pertin in D. in Com. predict. & de manufortii detentione ejusdem messuagii dicunt super sacram. suum quod W. D. nuper de H. in Com. predict. Labourer, primo die Maii, Anno, &c. superdict. apud D. predictam in Com. predicto in unum messuagium cum pertin existen. liberum tunc ejusdem E. I. & tunc in pacific. possessione predict. E. I. adtunc & ibi pacifice intravit & predict. E. I. vi & armis illicie ac manufortii adiunc & ibidem inde expulit, ejecit, & disseisivit, & apud E. I. sic inde expuls ejet. & disseisit. apud H. predictam in Com. predicto a predicto decimo die Maii Anno supradicto usque diem capiti huius inquisitionis de messuagio predicto cum pertinen. vi & armis illicie & manufortii extra tenuit & adhuc extra tenet, Ad grave damnum ipsius E. I. & contra pacem dicti Domini Regis nunc contr. & dignitat. suas, nec non contra formam statuti in huiusmodi casu edit. & provis.

Nota. There being divers Statutes against Forcible Entries, therefore the best way is not to write the word Statuti at length, but Statut. so as it may be taken for Stat.

Statut orum or Statuti, as occasion shall require, and so in other Indictments upon Statutes.

Another Indictment in Forcible Detainer. St. 8 H. 6. c. 9.

Jur. &c. qd. H. V. primo die Octobr. Anno, &c. apud T. in Com. B. in unum messuagium cum pertin. ad existen. liberum tent. cujusdem p. V. ac ad tunc in tenura & possessione ipsius p. V. existen. pacifice intravit & ingressum fecit & prafat. p. V. de messuagio predicto cum pertin. ad tunc & ibidem pacifice expulit, Angl. hath put out, & disseisivit eodemque p. V. de messuagio predicto cum pertin. sic ut prefert. expuls. & disseisivit existen. predict. H. V. predictum P. V. a predicto primo die Octob. Anno supradicto usque diem capionis hujus Inquisitionis apud T. pred. in Com. pred. illicite, injuste, injuriose, vi & armis ac manu forti inde extratenuit & adhuc extratenet: ad grave damnum ipsius p. V. & contra pacem &c. nec non contra formam statuti in hujusm. casu edit. & provis.

Indictment upon a Forcible Entry and Detainer.

Jur. &c. qd. M. K. nuper de, &c. R. G. nuper de, &c. 20 die Maii anno, &c. apud C. in Com. L. vi & armis, &c. videlicet gladiis, baculis, cultris & aliis armis tam invasivis qu. defensivis injuste, illicite, injuriose, ac manu forti &c. cum pertin. jact. & existen. in paroch. de

de C. pradiſt. in Com. pradiſto adtunc exiſten-
 lib. tenementum cuiusdem I. B. gen. Ac ad-
 tunc in tenura & poſſeſſione ipſius I. B. exi-
 ſten. intraverunt & ingreſſum fecerunt &
 præſatum I. B. vi & armis, &c. adtunc &
 ibidem injuſte, illicite, injurioſe, ac manuſorti
 diſſeiſieverunt & ipſum I. B. à poſſeſſione ſua
 inde adtunc & ibidem vi & armis illicite, in-
 juſte, ac manuſorti eiecerunt & expulerunt,
 Anglice have put out and expelled. Eodem-
 que I. B. ſic inde ut præfert. diſſeiſit exiſten-
 & ab inde expulſit eundem I. B. à prædiſto
 viginti die Marti anno ſupradicti uſque diem
 captionis huius inquisitionis ſcilicet primum
 diem Auguſti Anno decimo ſupradicti à præ-
 dicto meſſuagio viginti acris terra 20. acris
 prati cum pertin. apud C. prædictam in comi-
 tatu prædicto vi & armis, &c. illicite, injuſte,
 injurioſe, & manuſorti extra tenuerunt & ad-
 huc extra tenent, ad grave damnum ipſius I. B.
 & contra pacem, &c. nec non contra formam
 ſtatuti, &c.

For a Force for a Tenant for years.

Note the
 Juſtices
 have po-
 wer to a-
 ward re-
 ſtitution
 to Tenant
 for years,
 per Stat.
 21 Jac.
 c. 15. 1

Jur. &c. qd Rob. C. & C. D. de, &c.
 primo die Auguſti Anno, &c. apud G. in co-
 mitatu prædicto vi & armis illicite ac manu-
 forti in unum meſuagium cum pertin. ſciuit.
 & exiſten. in G. prædict. adtunc in tenura
 & occupatione cuiusdem A. B. tenentis
 termino diverſorum annorum adtunc & ibidem
 ventur. intraverant & ingreſſum fecerunt
 præſatum A. B. vi & armis, &c. & meſuagium
 prædictum cum pertin. adtunc & ibidem in-

illicite, ac manu forti ejecerunt & expulerunt,
 Anglice have put out and expelled.] prae-
 iudice A. B. sic inde ut praefert. eject. & ex-
 puls. existen. eundem A. B. praedicto primo
 die Augusti anno supradicto usque diem
 captionis huius inquisitionis scilicet viginti
 die. Septembris anno supradicto à praedicto
 mesuagio cum pertin. apud A. B. vi & armis
 ac manu forti extra tenuerunt & adhuc extra
 tenent ad grave damnum ipsius A. B. & con-
 tra pacem, &c. nec non contra formam statuti
 in huiusmodi casu edit. & provis.

A Justice of Peace may present Forcible *Viz.* High-
 Entries and High-ways upon his own view, ways by
 so as he make a Record thereof and certifie *St. 5 Ed. 3.*
 the same to the Quarter Sessions, and the *Forcible*
 Form of making such Record is thus, *Entries*
 15 R. 2. 2.

Presentment upon a Justices view.

Id. quod ego A. B. miles unus Justic.
 Domini Regis ad pacem in Comitatu Leic.
 conservand. assign. primo die Aprilis anno Re-
 gni Domini nostri Caroli secundi Dei gratia
 Angl. Scot. Franc. & Hibern. Regis fidei
 Defensor. &c. duodecimo super visum meum
 propr. presentio qd. prout in le. indictment.

Certificate upon removal of a force.

[First recite the Indictment] Super quo
 praefat. A. B. restitui eundem C. D. ad
 & pristinam possessionem ad mesua-
 gium praedictum cum pertin. & imposui finem
 super

super predictum C. D. & prefat. E. & quilibet eorum ad proximam prisonam Domini Regis com. predicti. pro sepeal suis offensis secundum formam statuti predicti.

Certificate of a Record taken at a private Sessions into the Kings Bench by Certiorari.

Certificate of the Bill it self.

Nott. ss. Inquisitio indentata capta ad privatam Sessionem pacis Domini Regis tent. apud T. in comitatu predicti decimo die Octobris anno, &c. coram J. H. Ar. uno Justic. Domini Regis pacem in com. predicti. conservand. assign. per sacramentum H. S. B. [recite all the Jurors] proborum & legalium hominum com. predicti. presentatum existit quod billa huius schedula annexat. est vera.

Certificate by Transcript.

Inquisitio indentata capta apud privat. Session. pacis Domini Regis tent. apud T. in com. Nott. decimo die Octobris anno regni Domini nostri Caroli secundi Dei gratia Angl. Scot. Franc. & Hibern. Regis fidei Defensor. &c. duodecimo, coram A.B. milite uno Justic. dist. Domini Regis ad pacem in comitatu predicti conservand. assign. per sacramentum D. &c. [recite the Jurors names] proborum & legal. hom. com. predicti. qui iurati &c. ad inquirend. de quad m pacifica inquisitio in quoddam mesuagium cum pertig.

Com. predict. & manuforti detentione premissorum predict. dicunt super sacramentum suum quod H. Z. nuper de, &c. primo die Octobris anno, &c. prout en le indictment.

Record taken at the general Quarter Sessions.

Nott. ff. Md. quod ad generalem Sessionem pacis Domini Regis tent. pro com. Nott. apud R. in comitatu predicto die Martii primo die Aprilis anno regni Domini nostri Carili secundi Dei gratia Angl. Scot. Franc. & Hibern. Re. in fidei Defensor. &c. duodecimo, coram Gervasio C. milite & C. D. Armiger & aliis sociis suis Justic. dicto Dom. Regis ad pacem in comitatu predicto conservand assign. nec non ad diversa felon. transgress. & al. malefacta in eodem comitatu perpetrat. audiend. & terminand. assign. per sacramentum A. B. C. D. &c. [names all the Jurors] proborum & legalium hominum com. predict. jurati & ordinati ad inquirend. pro Domino Rege pro corpore com. predict. presentatum existit Quod A. C. nuper de, &c. prout in le indictment.

Return of a Certiorari endorsed upon the Writ.

Executio istius brevis patet in quadam scheda huic brevi annexat.

Respons. A. B. mil. & C. D. mil. Justic. infra script.

Wh

Indict.

Indictment for Felony for stealing of Goods.

Linc. ss. Jur. pro Domino Rege super sacramentum suum presentant, Quod A. B. de C. in Comitatu L. Laborer primo die Maii anno regni Domini nostri Caroli secundi Dei gratia Angl. Scot. Franc. & Hibern. Regis fidei Defensor. &c. duodecimo vi & armis apud G. in comitatu predicto unum equum color. nigri pretii decem librarum & unam vaccam color. rubri pretii tres librarum de bonis & catallis cuiusdam L. F. Ar. adtunc & ibidem invent. adtunc & ibidem felonice furat. fuit cepit effugavit & abduxit contra pacem dicti Domini Regis nunc coron. & dignitat. suas.

Nota. Abduxit, is onely used in Indictments for Horse-stealing.

Effugavit, for stealing Oxen, Sheep, and and other Cattel.

Asportavit, for dead Goods, as Household-stuff.

If the Goods stollen belong to two or more jointly, then say, *De bonis & catallis quorundam A. B. & C. D. adtunc & ibidem invent adtunc et ibidem, etc.*

If the Owner of the Goods be not known then say, *De bonis et catallis cuiusdam hominis ignoti adtunc et ibidem invent. etc.*

Selling Ale without Licence.

Jur. etc. quod A. B. de, etc. decimo die Julii anno regni Domini nostri Caroli secundi dei gr. etc. ac diversis aliis diebus et vicibus tam antea quam postea vi et armis, etc. apud T. in Comitatu predicto obstinate et ex autoritate sua propria et sine aliqua Justit. dicti Domini Regis ad pacem in Comitatu predicto conservand. assign. admissione aut allocatione super se assumpsit custodire & custodiavit et adhuc custodit communem Cervisariam sine domum communis tipulationis, Anglicè a common Ale house, contra formam statuti, etc. nec non contra pacem, etc.

Breaking the Assize of Ale and keeping Gaming in his house. *St. 1 74.9.*

Quod A. B. nuper de E. in Com. L. primo die Maii anno, etc. apud, etc. existen. communis Tipulator diversis aliis diebus et vicibus tam antea quam postea vi et armis, etc. apud L. in Com. predict. usus fuit quasdam deceptivas mensuras, Anglicè vocat. Juggs, per quasdam deceptivas mensuras Idem A. B. apud L. predict. in Com. predicto Cervisiam suam et potum lupulat in falsis et deceptivis mensuris diversis subdit. dicti Domini Regis domum suam marital. apud L. predict. Com. predict. confluen. et acceden. illicite deceptivè vendidit et venditioni exposuit predicto die Aprilis, anno etc. illi vendidit cuidem C. F. unam mensuram

*Cervisia lupular. pro uno denario legalis mone-
ta, Angl. quæquidam mensura non continebat
in se unum sextarium, Anglicè one Ale quart,
in magnam deceptionem dicti Domini Regis
subdit. ac diversas personas ad cartas pictas ta-
bulas et al. joca illicita permisit in malum
exemplum, etc. ac in contemptum dicti Domini
Regis nunc et legum suarum, nec non contra
formam statuti, etc. ac etiam contra pa-
cem, etc.*

St. 17.c.9

Suffering ill rule in Prayer-time.

*Jur. etc. quod T. M. nuper de E. in Com.
L. Victualler octavo die Martii anno, etc.
existen. die Dominico ac diversis aliis diebus
et vicibus tam antea quam postea apud E.
predictam in Com. predicto tempore divini Ser-
vicii recepit et hospitavit diversas personas
maledispositas in domo sua mantional. et ipsos
ad excessiv. bibend. adtunc et ibidem illicitè et
scandalosè permisit in maximam dei displicen.
ac profanationem diei Dominici predicti.
ac in malum exemplum, etc. ac contra pacem,
etc. nec non contra formam stat. etc.*

Forestalling.

*Quod cum quidam A. B. de, etc. primo die
Decembris anno, etc. apud D. in Com. predicti
portans quinque quarteria hordei ad m.
eatum de G. in Com. predicto, quidam t.
C. D. nuper de, etc. leges et statuta hujus
gni, Angl. minime ponderans nec pœnam in
dem content. aliquàlter verens postea sc.*

pre

predicto primo die Decemb. anno supradicto vi
et armis, etc. apud, etc. predict. quinque quar-
teria hordei in alta via regia ducen. ad mer-
catum predictum ante quam hordeum predictum
fuit aſportat. ad mercatum illud de prefat.
A. B. illicitè emebat contra pacem, etc. nec
non contra formam stat. etc.

Regrating.

Quod B. D. de, etc. decimo die Aug. ſi an-
no, etc. ac diverſis aliis diebus et vicibus tam
antea quam poſterea apud villam mercatoriam
de D. in Com. predicto regratavit et emit de
diverſis perſonis Jur. predict. ignotis centum
quarteria framenti et viginti pondera ſalis
idem B. D. preterea ſcilicet predicto viginti die
Auguſti anno supradicto vi et armis, etc. apud,
etc. in eodem mercato illicitè revendidit contra
pacem nec non contra formam, etc.

Ingrossing.

Jur. etc. quod C. M. nuper de, W. in Com.
L. Ycoman, primo die Maii anno, etc. vi et
armis, etc. apud W. predictam in Com. predicto
centum ſalmones pretii cujuſlibet eorum quinque
ſolidorum emebat et ingroſſabat et in manus ſu-
as per emptionem obtinebat de diverſis perſonis
Jur. predict. adhuc ignot. ea intentione ad pre-
dict. centum ſalmones et quemlibet eorum re-
vendend. contra formam ſtatuti, etc. nec non
contra pacem, etc.

St. 4 Jac. 5. *For staying above an hour in an Ale-house.*

Jur. &c. cum quidam A. M. de, &c. (die & anno, &c.) & diversis aliis diebus & vicibus tam antea quam postea apud, &c. in domo communi cervisiar. (eodem A. tunc uno inhabitant. ejusdem villæ prædictæ existens. ad tunc non invitatur. existens. per aliquam viatorem ad associand. ipsum ibid. ad tunc non existens. un laborer aut mechanical. ibid. tunc prandend. aut circa aliqua opera per diem aut in grosso in eadem villa sit. ad. attend. ac in eadem domo cervisiar. tunc residend. Angl. journiar diversan. Angl. Lodging, aut commensal. existens. Anglice Boarding, n. cibid. m tunc remanend. circa aliqua imp. rtuna aut necessaria negotia allocat. per duos Justic. pacis ejusdem Com. illicite fuit & remansit bibendo, Anglice Tipling, W. H. nuper de, &c. tunc custod. ejusdem domus existens. premissarum non ignarus voluntarie permisit eundem A. ibidem in forma prædicta fore & remaind. bibend, Anglice Tipling, contra formam statuti, &c. nec non contra pacem, &c.

Ale-house-keeper harbouring idle persons to the disturbance of their Neighbours.

Jur &c, quod A. B. &c. primo die, & diversis al. diebus & vicibus tam antea quam postea vi & armis, &c. apud, &c. custodivit & adhuc custodit quendam communem tipulationis & in eadem

domo

domo sua ibidem hospitavit & recepit diversas otiosas personas in eadem domo sua ibidem indies se malè gerent ad maximam disturbancem vicinorum suorum prope ibidem commorant. & inhabitant. in malam exemplum, &c. & contra pacem, &c.

Disturbing a Minister. 5 M 3.

Jur, &c. quod I. H. decimo die Junii anno, &c. existen. die dominico apud T. prædicand. in Com. prædict. in Ecclesia paroch. de T. prædict. circa horam decimam ante meridiem ejusdem diei & tempore divini Servicii & quidam C. D. Clericus adtunc Minister. Rect r Ecclesiæ parochial. de T. leg time autorizat. ad prædicand. ad exequend. divina officia in Ecclesia prædicta & adtunc & ibidem existen. prædicand. verbum dei Inhabitan. & parochian. de D. prædict. quidam tamen E. F. nuper de, &c, vi & armis, &c. apud T. prædict. in Comit. prædict. ad impediend. ipsum C. D. in prædicatione sermonem suum prædict. adtunc & ibidem malitiosè & contempuossè molestare & impedire præterea scilicet eodem decimo die Junii anno supradicto prædict. E. F. apud C. prædict. in Comitatu prædicto voluntarie cogitat. per apertum verbum suum dicend. & alta & aperta voce propalando in Ecclesiam prædictam hæc Anglicana verba (viz.) *Come down thou prædict. innuendo preachest false doctrine :* præfat. C. D. in prædicatione sua prædict. malitiosè & contempuossè adtunc & ibidem

malitiosè & contempuosiè impedivir & disturbavit ita quod verbum Dei adtunc & ibidem pacificè prædicare non potuit in magnam, &c.

Assault, Riot, and Battery.

Jur. &c. quod A. D. C. &c. quinto die, &c. anno, &c. apud S. in Comitatu prædicto vi & armis, videlicet gladiis, baculis, bifurcis & aliis armis tam invasivis quam defensivis illicitè, rioso è, & routosè sese assemblerunt ad pacem dicti Domini Regis perturband. & sic adtunc & ibidem assemblat, congreg. & unit. in & super quendam C. D. in pace dei ac dicti Domini Regis adtunc & ibidem existen. vi & armis rioso è, routosè, & illicitè adtunc & ibidem insultum & affrayam fecer. & ipsum C. D. adtunc & ibidem verberaver. vulneraver. & male tractaver. ita quod de vita ejus maximè desperabat. & alia erormia eidem C. D. adtunc & ibidem intuler. ad grave damnum ipsius C. D. & contra pacem, &c. nec non contra formam statuti in hujusmodi casu edit. & provis.

Minister refusing to administer the Communion. 1 Eliz. 2.

Jur &c. quod T. E. nuper de, &c. tertio die anno, &c. ac diu antea existen. Minister Ecclesiæ parachialis de L. prædict. in Com. prædict. & prædict. die & anno, &c. sacramentum Cœnæ Dom. diversis inhabitantibus de L. prædict. in Comitatu prædicto admini
stravi

stravit in Cancellia Ecclesie parochal. de L. prædict. quidam R. S. adtunc unus paroch. prædict. parochia & in Cancellia prædicta tunc præsens & humiliter, sobriè, piè, & reverenter flexis genibus desiderans, & offerens se recipere & particeps esse & fieri dicti Sacramenti Coenæ Dominici secundum rit. ordin. præscript. per leges hujus Regni Angliæ stabilizat. prædictus tamen T. B. leges & statut. hujus Regni Angliæ minime ponderans nec poenam in eisdem content. aliquatiter verens. adtunc & ibidem Sacramentum Coenæ Domini prædict. præfat. T. B. non administravit sed idem sacramentum Coenæ Domini eiden Ric. sine aliqua causa legitima administrare, irreligiosè, & voluntariè adtunc & ibidem denegavit & recusavit in contempt. dicti Domini Regis nunc & legum suarum ac in maximam disconsolationem ipsius R. T. ac etiam in malum exemplum omnium aliorum in hujusmodi casu edit. delinquen. nec non contra formam statuti, &c. & contra pacem, &c.

Minister refusing to bury the Dead.

Jur. &c. quod F. M. nuper de, &c. Clericus decimo die Junii anno, &c. ac diu antea fuit & adhuc est in W. minister. & curat. pro I. M. Clericus Rectoriæ Ecclesie parochal. de W. prædict. quodque quidam W. G. nuper de, &c. exiit. uno parochianorum paroch. de W. prædict. præterea scilicet prædicto decimo die Junii anno supradicto apud W. prædict. ex visitatione
Dei

Dei obiit quodque etiam præterea scilicet 13. die Junii anno iupradicto quidam C. R. de W. prædict. præfat. F. M. ad sepeliend. corpus prædictum W. C. ad tunc & ibidem requisivit secundum ritus ordines præscript. per leges hujus Regni Angliæ stabilitar. prædictus tamen F. leges hujus Regni Angliæ minimè ponderans nec pœnam in eisdem content. aliquialiter verens prædictum corpus prædicti W. C. secundum ritus ordines & præscript. hujus Regni stabilitar. sepelire contemptuosè obstinatè & irreligiosè recusavit & denegavit in contemptum dicti Domini Regis legumque suarum ac in malum exemplum, nec non contra formam statuti, ac contra pacem, &c.

Not repairing the Banks of a River.

Jur. &c. quod à tempore cujus contrarii memoria hominum non existit fuerunt & adhuc sunt communes Ripæ, Anglicè vocat. *common Crips*, scituat. & erect. & posit. juxta rivum Sabrinæ prope altam regiam viam in paroch. de E. in Comitatu prædicto ducens à villa de L. in Comitatu prædicto usque villam mercatoriam de D. in eodem Comitatu pro obstupatione apud Riv. prædict. ab alta regia via prædicta & meliore preservati-
one ejusdem viæ quæ quidem ripæ tertio die & anno apud, &c. fuerunt & adhuc sunt valdè confract. irreparat. & in magno decasu ob defectum reparationis & emendationis earundem quodque inhabitan. de E. prædict. in Comitatu prædicto easdem communes

munes ripas facere, reficere, reparare, & emendare consueverant & debent toties quoties necesse fuit ibidem tamen inhabitant. ripas prædictas omnino irreparat. sine emendant esse & remanere per totum tempus supradict. permiserunt & adhuc permittunt ad grave damnum & commune nocument. subdit. dicti Domini Regis per altam viam prædictam transeund. & contra pacem, &c.

Nuzans in digging Holes and Pits in alta Regia via.

Jur. &c. quod A. B. &c. tertio die & anno) vi & armis, &c. apud, &c. in communi alta regia via ibidem ducen. à I. in Comitatu prædicto usque ad Civitatem Coventr. existen. communi alta regia via pro omnibus ligeis subdit. dicti Domini Regis cum equis, carucis & vehiculis suis transire, equitare & laborare quosdam cayos, Anglicè *Holes*, & fossas, Anglicè *Pits*, cum quibusdam malleis, Anglicè *Mattocks*, & ligonibus ac aliis machinis adtunc & ibidem fodiebat & faciebat & fodi ac fieri causavit ad grave damnum commune nocumentum omnium ligeorum subditorum prædict. per eandem altam regiam viam prædictam ibidem cum equis, carucis & vehiculis prædictis transeun. equitam. & laboran. in malum exemplum, &c. & contra pacem, &c. nec non contra formam, &c.

Taking Partridges in a Net.

Jur. &c. quod I. D. pro de D. inter quintum
em Junii anno, &c. & duodecimo die Maii
extrunc prox. sequen. vi & armis, &c. apud
C. in Comitatu prædicto decem perdices
cum retibus & aliis ingenis illicitè & injustè
sine aliqua licentia inde prius habit. & ob-
tent. ceperunt necaverunt & destruer. in
contemptum Domini Regis nunc & legum
suarum ac in malum exemplum omnium
aliorum in dict. casu delinquen. ac etiam
contra formam statuti, &c. nec non contra
pacem, &c.

*Against Inhabitants for not repairing
a High-way.*

Jur. &c. quod quædam communis alta
regia voc. &c. apud, &c. ducen. &c. tertio
die & anno, est valdè ruinosa & in decasu ob
defectum reparationis & emendationis ejus-
dem ita quod ligei subditi dicti Domini Re-
gis supra per & transeun. altam regiam
viam cum correctat. carrueis, cariagiis, &
aliis necessariis suis prout solebant & debent
itinerare, transire & laborare non possunt
absque magno periculo vitæ. rerumque su-
arum ad grave damnum & commune nocu-
mentum omnium ligoorum dicti Domini
Regis subditorum per viam illam regiam
prædictam transeun. & itineran. nec non
contra pacem, &c. & quod inhabitantes de
C. in Comitatu prædicto regiam viam præ-
dictam

dictam toties quoties & quando necesse fuit emendare & reparare debent.

An Assault and Battery.

Jur. &c. quod A. C. nuper de, &c. quinto die, &c. anno, &c. vi & armis, &c. apud D. prædict. in Comitatu prædicto in & super quendam G in pace Dei ac dicti Domini Regis adtunc & ibidem existen. insultum & affraiam fecit & ipsum G. adtunc & ibidem verberavit, vulneravit & male tractavit, ita quod de vitæ ejus maximè desperabat. & alia enormia eidem G. adtunc & ibidem intulit ad grave damnum ipsius G. & contra pacem, &c.

Assaulting in the Church and drawing Blood.
Stat. 5 E. 6. cap. 4.

Jur. &c. quod F. M. Clericus (tertio die & anno) vi & armis, &c. apud W. in Comitatu prædicto in Ecclesiâ parochial. ibidem in & super quendam I. L. in pace Dei ac dicti Domini Regis adtunc & ibidem existen. malitiosè insultum & affraiam fecit quodque prædictus F. ipsum I. adtunc & ibidem in Ecclesiâ paroch. prædict. cum baculo quod idem F. M. in dextra manu adtunc & ibidem habuit & tenuit in & super os & labra ipsius I. adtunc & ibidem malitiosè percussit & sanguinem ipsius I. adtunc & ibidem extraxit, & ipsum I. adtunc & ibidem verberavit, vulneravit, & male tractavit, Ita quod de vita ejus magnoperè desperabat.

sperabat. & alia enormia ei adtunc & ibidem intulit ad grave damnum ipsius I. & contra pacem, &c. nec non contra formam, &c.

Misusing an Apprentice.

Jur. &c. quod T. P. de, &c. tertio die & anno, &c. apud, &c. vi & armis, &c. in & super quendam E. H. adtunc & adhuc apprentic. prædict. existen. & in pace Dei, &c. insultum & affraiam fecit & ipsum E. adtunc & ibidem apprentic. suum violenter illicitè & præter debir. correctionem & castigationem adtunc & ibidem verberavit, vulneravit, Ita quod de vita, &c. & alia enormis, &c. ad grave damnum ipsius, &c. & contra pacem, &c.

A common Barretor.

Jur. &c. quod A. B. tali die & anno, &c. ac diversis aliis diebus ac vicibus tam antea quam postea apud, &c. vi & armis, &c. fuit & adhuc est communis Barretator, calumniator, pacisquæ dicti Domini Regis perturbator assiduus ac diversas lites contumel. & discord. inter diversos ligeos dicti Domini Regis subditos tunc & ibidem & alibi in Comitatu prædicto injustè movebat, procuravit, exercuit, & excitavit in dicti Domini Regis nunc contempt. & grave damnum populi dicti Domini Regis necnon contra formam diversorum statutorum in hujusmodi casu edit. & provis. nec non contra pacem, &c.

Badgio

Badging without licence. Stat. 5 El. c.12.

Jur. &c. I. C. nuper de, &c. quinto die, &c. ac diversis aliis diebus & vicibus tam antea quam postea apud D. in Comitatu prædicto exercuit & occupavit facult. emptoris & venditoris granorum, Anglicè vocat. *the Faculty of a Badger or Carrier of Corn and Grain*, idem I. C. ad aliquam generalem Sessionem pacis tenr. pro Comitatu prædicto ad facultatem illam non admissus nec assignatus fuit contra formam statuti & necnon contra pacem, &c.

Badgers. 5 El.12.

Jur. &c. quod A. B. nuper de, &c. tali die anno, &c. ac diversis aliis diebus & vicibus tam antea quam postea apud C. &c. fuit communis frumentarius, Anglicè vocat. *a Badger and Buyer of Corn*, absque aliqua licentia inde ei ad inde aut fiend. concess. contra formam, &c. nec non contra pacem, &c.

Refusing to use the Book of Common-Prayer.

Jur. &c. quod A. B. &c. existen. Rector, Vicarius, five Minister. Ecclesiæ parochial. de S. prædict. in Comitatu prædicto & curam animarum in eadem paroch. super se assumens tali die & anno, &c. machinans & intendens derogare & deprivare convenient. necessar. & rit. communis & apert. pre-

precationis appunctuat. habend. & utend. in Ecclesiis & Capellis infra hoc regn. Angliæ specific. & edit. Anglicè *set forth*, in quodam libro intitulat. *The Book of Common-Prayer and Administration of Sacraments, and other Rites and Ceremonies in the Church of England*, prædicto 20. die, &c. existen. die Dominico quo die prædicto preces in prædicto libro mentionar. per prædict. A. B. ut Minister ibidem cantari, legi vel dici debuissent secundum formam statuti in huiusmodi casu edit. & provis. prædict. tamen A. B. communes preces prædict. non usus fuit sed easdem preces totaliter omisit & uti omnino recusavit in dicti Domini Regis nunc contempt. ac in malum & pernitiosum exemplum, &c. nec non contra prætem, &c. ac etiam contra formam statuti, &c.

Constable neglecting to serve a Warrant.

Jur. &c. quod T. T. nuper de, &c. existens. constabul. villæ de, F. in Comitatu prædicto & quod cum quodam Warrant. G. A. unius Justic. &c. direct. fuit eidem T. T. ad capiend. & apprehend. quendam I. B. & cum salvo custod. & ad auferend. ipsum I. B. coram præfat. G. A. ad respondend. &c. prædictus tamen T. T. existens. constabul. villæ prædictæ debitum officii sui minimè ponderans & in favore ipsius I. B. eundem I. B. capere seu arrestare omninò neglexit, & ipsum I. B. in executione Warrant. prædict. nunquam arrestavit.

nec cepit contra debitum officii sui predicti. ac in magnam retardationem Justic. quam quidem citius & facile facere potuerit, nec non in malum exemplum ac etiam contra pacem, &c.

Constable neglecting Hue and Cry.

Jur. &c. quod cum quidam malefactores & *Jur. predicti.* adhuc felon. ignor. tali die & anno, &c. pro quibusdam felonis & burglariis perpetrat. fugam fecer. et seipsos ad loca incognita retraxerunt, cumq; etiam postea scilicet (tali die et anno, etc.) hutesia et clamor pro eisdem felonis et burglariis in villa de, etc. fact. et levat. fuit, notitiámque inde cuidam A. B. adtunc Constabul. de C. in Com. pred. de felon. et rober. predicti. adtunc et ibidem dat. per quam malefact. et felon. predicti. attachiari potuissent; pred. tamen A. B. prosecutionem hutesia et clamor. predicti. versus malefactores et felon. pred. omnino neglexit, recusavit contra debitum officii sui predicti, ac in retardationem Justic. ac etiam in contemptum dicti Domini Regis nunc legúmque suarum, et contra pacem, etc.

For suffering an Escape after an Arrest.

Jur. &c. quod A. B. nuper de, C. in Comitatu predicto existen. constabul. de C. in Comitatu predicto nono die, &c. virtute cujusdam warrant per quendam R. W. Ar. unum Justic. dicti Domini Regis ad pacem in Comitatu predicto conservand. assign. confect. geren. dat. eisdem die et anno et sigillo

ipsius R. W. sigillat. et eidem I. direſt. apud,
etc. cepiſſet et arreſtaſſet quendam T. nuper, etc.
ad reſpondend. de et ſuper hiis qua ex parte
diſti Domini Regis ſibi objicientur; prediſt.
tamen I. decimo die, etc. ap. d, etc. ipſum
T. adtunc et ibid. in cuſtodia ipſius I. adtunc et
ibid. exiſten. ita negligent. cuſtodivit, quod pro
deſectu bone et ſufficient. cuſtod. idem T. à pred.
I. adtunc et ibidem evaſit et ad largum ivit et
eſcapiavit, et ſic prediſt. I. prediſt T. apud
C. prediſt. in Comitatu prediſto evadere et
extra cuſtodia ſua ad largum ire negligent
et illicitè permiſit, in retardationem Juſtitie
ac in mal. m et pernicioſum exemplum aliorum
ſubditorum diſti Domini Regis in tali caſu
delinquen. at contra pacem, etc.

Cottage erected and continued. 31 Eliz. I.

Jur. &c. q. ad N. B. et . tali die et anno,
etc. fecit, edificavit, et crexit aut fieri, edifi-
cari, et erigi ea ſavit unum cottagium et
habitationem vel mantionem, Angl. habitation
or dwelling, et non assignavit aut ejecit,
Angl. did not assign or lay, eidem cot-
tagio quatuor acras terr. ad minus accom-
putan. ſecundum ſtat. t. vel ordinationem de
terr. meſurand. exiſten. liberum tenemen-
tum et hereditar. cujuſdem E. H. et eidem cot-
tag. prope adiacen. continuè occupari et coli,
Angl. to be occupied and manured, cum
eodem cottag. tam diu quam idem cottag. fuit
inhabitat. et prediſtus M. B. cottag. prediſt.
ſic per ipſum ut preſertur fact. edificat. et
ereſt. aut fieri, edificari et erigi cauſat. à
prediſto

prediſto primo die, etc. uſque diem, etc. voluntariè ſuſtentavit, manutenuit, et continuavit, contra formam ſtat. etc. ac contra pacem, etc.

Cheating at Cards.

Jur. etc. quod A. B. C. D. E. F. de, etc. exiſtentes communes luſores apud piſtas chartas, Angl. common Players at Cards, et perſone male nominis, fame et converſationis, nec non communes deceptores et preſtigiatores, Angl. common Cheats and Defrauders, ligei populi diſſi Domini Regis ad ſuſtentandum inutiles curſus vite, quinto Maii anno, etc. apud, etc. machinans et intendens quendam R. B. tunc apprenticum cujuſdem T. L. callidè et fraudulentè decipere, et defraudare, et diverſas pecuniarum ſummas de prediſto T. L. à prediſto R. B. apprentic. prediſſ. T. L. ſub colore ludendi apud piſtas chartas ſubdole et fraudulentè obtinere et acquirere, prediſſum Richardum Boothby ad tunc et ibidem ad ludendum apud piſtas chartas cum ipſis preſat. A. B. C. D. E. F. apud quendam luſum, vocat. Put, et quendam al. luſum, vocat. etc. pro diverſis pecuniarum ſummis ad tunc et ibidem ſolicitavit, excitavit et procuravit, ratione cujuſdem ſolicitation. excitation. et procuration. prediſſ. A. B. C. D. E. F. ipſe preſat. R. B. ad tunc et ibidem apud ſeperal. luſum prediſſ. cum preſat. A. B. C. D. E. F. pro diverſis pecuniarum ſummis ludebat, et quod prediſſ. A. B. C. D. E. F. apud prediſſ. ſeperal. luſum, vocat. Put et Parsons Games,

cum prefat. R. B. decem libras in pecunia numerat. de pecuniis propriis predicti. T. L. a predicti. R. B. adtunc et ibidem subdole, callidose, fraudulenter, et deceptivè in manum et possessionem ipsorum prefat. A. B. C. D. E. F. obtinuerunt et nacti sunt, ad grave damnum predicti T. L. ad manifestum damnum, deceptionem et depauperationem predicti R. B. in contemptum legum hujus Regni Angl. in malum et perniciosissimum exemplum omnium aliorum in tali casu delinquent. contra pacem dicti Domini Regis nunc coronam et dignitatem suas.

Cheating at Dice.

Jur. etc. quod R. B. nuper de, etc. W. P. et I. K. de, etc. existen. communes lusores cum aleis falsis, et homines male fame et dispositionis inhoneste 20 Jan. anno, etc. apud S. in paroch. etc. conspitione inde inter prefat. R. B. W. P. et I. K. prehabita) cum falsis aleis callide et subdole decipere et defraudare quendam M. P. callide et deceptivè parare, et obtinere eundem M. P. adtunc et ibidem ludend. ad aleas cum predicti R. B. W. P. et I. K. ad quendam lulum vocat. Most at three Throws, pro diversis denar. summis exiitaver. et procuraver. et predicti R. B. W. P. et I. K. et M. P. adtunc et ibidem ad lulum predictum vocat. Most at three Throws, in simul denar. predicti R. B. W. P. et I. K. adtunc ibidem subdole et fraudulenter usi fuer. ludebant cum quibusdam falsis et decepti

aleis, vocat. High Fullams, predicti. R. B. W. P. et I. K. adtunc et ibidem scien. aleas predicti. esse High Fullams, et falsas et deceptivas, ratione cuius predicti. R. B. W. P. et I. K. adtunc et ibidem diversas denariorum summas in toto attingen. ad quinquagint. et tres libras legalis moneta Anglia de prefat. M. P. per lulum predictum fraudulentem et deceptivè paraver. et in manus suas obtinuer. ad grave damnum ipsius M. P. in malum et pernitiosum exemplum, &c. et contra pacem, &c.

An Eaves-dropper.

Jur. &c. quod A. B. &c. quinto die, &c. et diversis aliis diebus, &c. apud, &c. fuit et adhuc est communis auscultator sub testis domorum proximorum et vicinorum suorum. Ita quod magna jurgia, controversia, lites, et discordia tam inter vicinos suos quam multos multos alios fidel. subdit. dicti Domini Regis nunc ibidem prope inhabitant. et commoran. excitata fuer. contra pacem, &c.

Keeping a Gaming house for Cards, &c.

Jur. &c. quod A. &c. de, &c. Victualer, quinto die, &c. et continuè postea usque, &c. vi et armis, &c. apud K. predicti. in Comitatu predicto quendam communem domum cum aleis, chartis pictis et tabulis ludend. illicitè custod. et manutenuit pro injust. et iniquo lucro et advantage suis, quodq. predictus A. predicto tercio die, &c. anno, &c. et diversis diebus

et vicibus tam antea quam postea apud, &c. in domo suo pradiſt. ludis pictarum chartarum, alearum et tabularum, habuit, custodivit, usus fuit, permisit, et exercuit, et manutenuit, contra pacem, nec non contra formam statuti, &c.

Another.

Jur. &c. quod A. &c. Victualler, quinto die, &c. et diversis aliis diebus et vicibus tam antea quam postea apud E. pradiſt. in Comitatu pradiſto quendam domum lusorum pro injusto et iniquo lucro et advantage suis propr. illicitè custodivit et manutenuit, ac diversos honestos dicti Domini Regis subditos domo pradiſto confluen. et venien. ad diversos ludos illicitos, videlicet, ad lusorium chartarum pictarum et tabularum ludere permisit, contra formam statuti, &c. nec non contra pacem, &c.

Shooting with a Gun not having an hundred pound per annum.

Stat. 33. H. 8. 6. Jur. &c. quod S. H. nuper de, &c. non habens terra, tenementa aut hereditamenta in jure suo proprio, nec in jure uxoris sue, nec annuitat. vel offic. ad valenc. cent. lib. per annum (tali die et anno, &c. apud C. pradiſt. in Comitatu pradiſto usus fuit, custodivit, et habuit quoddam tormentum, Ang. a hand Gun, et cum eodem tormento (eodem die et anno) et diversis aliis diebus et vicibus tam antea quam postea ad diversos volucres et al. animal.

mal. sagittavit, nec non duos phesianos, Angl. Phesants, infra libertatem de C. prædict. in Comitatu prædicto cum tormento prædicto illi-
ciè sagittabat & interfecit, Angl. &c. contra
stat. &c. & contra pacem, &c.

Intending Poyson.

Jur. &c. quod, &c. deum præ oculis suis non
habens, sed, &c. subdolè, cautè, diabolicè, &
malitiosè, intendens mortem, venenationem &
destructionem cujusdam E. H. voluntariè, dia-
bolicè, subdolè, cautè quoddam vinum, Angl.
Sack, cum quodam veneno, Angl. vocat. Mer-
cury mixt. & composuit. Angl. &c. & præ-
dict. A. B. sciens venenum prædictum, Angl.
fore venenum, & vinum prædictum, Angl. the
Sack aforesaid, cum veneno prædicto sic ut
præfertur mixt. & composuit. & in quandam
ollam, Angl. a Bottle, adtunc & ibidem posuit.
præfat. T. H. ad bibend. adtunc & ibidem
subdolè, cautè, diabolicè & malitiosè dedit ea
intentione ad venenand. interficiend. & mur-
drand. prædict. E. H. cum potatione, Angl.
with drinking, prædicti vini, Angl. Sack
aforesaid, sic cum veneno prædicto, Angl.
Mercury sic ut præfertur per antea mixt. &c.
composuit. contra pacem, &c.

For Hawking in Corn, 23 Eliz. 10.

Jur. &c. presentant quod A. B. nuper de,
&c. gen. quinto die Maii anno, &c. vi
& armis, &c. apud C. in Comitatu præ-
dicto clausum cujusdam D. E. vocat. &c.
li 4 fregit

fregit & intravit, & adtunc & ibidem in clauso pradiſto (viz.) in tres acras inde in quibus blada hordei pradiſti D. E. ad valenc. quadrag. solid. tunc fuit ſtan. creſcen. & ſpicat. Angl. eared, adtunc & ibidem illicite aucupatur & cum canibus, vocat. Spaniels, in clauso pradiſto ubi blada ſtan. et ſpicat. pradiſti. tunc creſcen. adtunc et ibidem illicite et injurioſe venat. fuit et alia enormia, etc. ad grave damnum ipſius D. E. ac contra formam ſtatuti in hujusmodi caſu edit. et proviſ. nec non contra pacem, etc.

Killing Hares in the Snow, 14 H.8.10.

1 Jac. 27.

Jur. etc. quod A. B. nuper de, etc. quinto die Maii anno, etc. vi et armis, etc. apud D. in Comitatu pradiſto nive, adtunc et ibidem exiſten. et jacen. ſuper terram unum leporem in nive cum quodam cane Gallico, vocat. a Greyhound, adtunc et ibidem invenit venat. fuit, diſtruit et interfecit contra formam ſtatuti, etc. nec non contra pacem, etc.

Against an Inkeeper taking excessive Rates for Hey and Oats.

Quod A. B. de C. in Comitatu D. Inholder, exiſten. hoſpes ſive hoſtellarium et commune hoſpitium cuſtodienſ, quinto die Maii anno, etc. vi et armis, etc. apud C. pradiſti. in Comitatu pradiſto avenas ad pretium viginti denariorum pro quolibet modio, Angl. a Buſhel, cuidam

G. F.

G. F. illicitè vendidit pretium pro aliquo modo avenarum in mercat. de B. in Comitatu pradiſto tunc exiſten. mercat. pradiſt. de villa de C. non exiſten. ultra ratam duodecim denariorum, quodque pradiſtus A. B. pradiſto quinto die Maii anno ſupradiſto apud C. pradiſt. in Comitatu pradiſto de præſat. G. F. octo denar. pro depaſt. unius equi cum feno in una nocte injuſtè et immoderatè recepit et habuit, eodemque A. B. non habente reſpectum pretii pro quibus avena vendit. fuer. in mercato proximo adjacen. et ſic pradiſtus A. B. avenas et fenum pradiſt. Angl. the Hey and Provender aforeſaid, modo et forma pradiſt. ad pretia immoderabil. et irrationabil. et pro immoderabil. lucro et advantage ſuis vendidit in magnam oppreſſionem et gravamem pradiſt. G. F. et in malum exemplum, etc. ac contra pacem, etc. nec non contra formam ſtatuti, etc.

Cutting Hair from Horſe-tails.

Fur. etc. quod I T. nuper de, etc. tali die et anno, etc. duas libras crinis, Angl. two pounds of Hair, valor. etc. de bonis et catalis cujuſdam C. adiunc et ibidem invent. à caudis duarum equarum ad tunc et ibidem illicitè & injurioſè torondit et ſuccidit, et præd. duas libras crinis ſic tonſas et ſucciſas felon. furat. ſuis, cepit et aſportavit contra pacem, etc.

Inmates and Under-sitters.

Jur. etc. quod I. C. de, etc. tali die et anno, etc. apud I. predict. non existen. civitat. vil. mercator. sen aliquem burgum, recepit in domum suam mantionalem ibidem quandam Janam I. ut subtenent. Anglice an Inmate, et familia ejusdem Janæ simul cum ipso Jeremia in domo suo pred. cohabitare illicite permisit ac eandem Janam cum familia sua pred. simul cum prefat. I. C. in domo sua pred. apud I. pred. in C. pred. 29 Maii an. supradicto per spatium unius mensis tunc prox. sequen. ut subtenen. hospitavit et commorare et cohabitare adtunc et ibid. illicite permisit ac eandem Janam subtenen. Angl. an Inmate, cum familia sua in domo predicto ipsius Jer. per spatium predictum illicite custodivit et adhuc custodit contra pacem, etc. nec non contra formam statuti, etc.

Nuisance in keeping Hogs in a Market-town.

Jur. etc. quod A. B. tali die et anno, etc. apud, etc. custodivit et adhuc custodit diversos porcos, Angl. Hogs. et eosdem porcos cum fimo et intestinis bestiarum et aliis feditatibus adtunc et ibidem pavit. per quod aer ibidem maxime corrumpebatur, et infest. existit ad commune nocumentum omnium ligeorum et subditorum dicti Domini Regis tam ibidem commoran. quam ibidem transeun. et contra pacem, etc.

For enticing Servants from their Masters.

Quod A. B. ꝑꝑꝑ. primo die Nov. Anno, etc. apud, etc. illicite et injuriose procuravit et excitavit quendam I. C. servient. cujusdam D. M. à servitio suo ibidem existen. abire et ab eodem servitio recedere ante expirationem termini servitii sui prædicti. pretextu cujus quidem procurationis ibidem I. C. postea, scilicet decimo die Nov. anno supradicti à servitio dicti D. M. adtunc et ibidem recessit, quodque Idem A. B. est communis procurator servientium diversorum ligeorum dicti Domini Regis subditorum à servitiis suis recedend. Ita quod ligei dicti Domini Regis subditi de hujusmodi servientibus ad negotia sua perimplend. multipliciter gravati existunt, In dicti Domini Regis nunc contemptum, et quamplurimorum ligeorum ejusdem Domina Regis deteriorationem manifestum. Nec non contra pacem, etc.

Trespasse in breaking a Close.

Quod A. B. nuper de, etc. primo die Apr. anno, etc. vi et armis etc. apud C. prædicti. in Com. prædicti. Clausum cujusdam E. F. vocat. sc. Holmes fregit et intravit; ac herbam suam ibidem tunc crescen. cum averiis suis pedibus suis ambulando conculsavit et consumpsit; Nec non unum Cumulum feni Ang. one cock of Hay, ad valenc. 2 s. de bonis et Catall. prædicti. E. F. ad et ibidem invent. ad et ibidem injustè illicite et injuriosè cepit
et

et aspertavit. Ad gravè damnum ipsius E. F. Et alia enormia eidem E. F. adtunc et ibidem intulit contra pacem, etc.

*The Form of setting down Informations
and Examinations.*

Note, Every Information must be taken upon oath of the party informing or complaining, and the manner is thus:

The Information of A. B. of &c. taken upon oath the 10 day of May in the 13. year of the Reign of our Sovereign Lord Charles by the grace of God, King of England, &c. before me Sir Robert G. Knight, one of his Majesties Justices of Peace of the County of North.

The said Informant saith, that about 6. of the clock the last night his house was broken, &c,

Note, the Examination of Felons are not to be taken upon oath.

North. ss. The Examination of G. T. taken the 10. day of May in the 13. year, &c. ut supra, before me Sir R. G. Knight, one of the Kings Majesties Justices of Peace of the County of N.

Recognizance to appear and prosecute.

Not. ss. Memorandum quod A. B. de F. in Com. Not. yeom. decimo die Maii anno regni Domini nostri Caroli secundi Dei gratia Angl. Scot. Franc. et Hibern. Regis, fidei defensoris

ris, &c. decimo tertio, venit in propr. persona sua coram mee Johanne B. uno Justic. dicti Domini Regis ad pacem in Com. predict. conservand. assignan. & cogn. se teneri dicto Domino Regi in quadraginta libris legalis monete Angl. de bonis & Catal. lis, terris & tenementis suis ad opus & usum dicti Domini Regis & successorum suorum fieri & levare si contigerit ipsum A. B. in conditione sequente. deficere & inde legitimo modo convinci.

The Condition of this Recognizance is such, That if the above bounden A. B. do personally appear at the next general Quarter Sessions to be holden for the said County of Nott. then and there in due form of law to prosecute and give evidence against G. T. concerning the stealing, &c. that then this Recognizance to be void, or else to remain in full force and virtue.

Condition to appear at the Assizes to prosecute.

The Condition, &c. ut supra, do appear at the next Assizes and general Gaol delivery to be holden for the said County of N. then and there to prosecute and give evidence, ut supra.

Condition to answer.

The Condition, &c. ut supra, then and there to make answer concerning the stealing of one Cow of C. L. whereof he stands

stands accused, and all other such matters which on his Majesties behalf shall then and there be objected against him, and not to depart the Court without licence thereof, but abide such order therein as the Court shall think fit; that then the said Recognizance to be void.

For the good Behaviour.

To answer to all such matters and things as on the Kings Majesties behalf shall be objected against him concerning the bearing of, &c. And in the mean time to be of the good behaviour towards our Sovereign Lord the King, and all his Leige people; and not depart the Court without licence thereof: That then, &c.

For the Peace.

To answer to all such matters and things as on the Kings Majesties behalf shall be objected against him concerning the threatening of C. D. and in the mean time to keep the peace of our said Sovereign Lord the King, towards all his Leige people, and especially towards the said C. D. and not to depart the Court, &c. *ut supra*.

Recognizance with Sureties.

Northr. It. *Md. quod primo die April. anno regni Domini nostri Caroli secundi Dei gratia Angl. Scot. Franc. & Hibern. Regis fidei defensoris,*

defensoris, &c. decimo tertio coram nobis
Johan. G. Milite, & Tho. F. Ar. Justic.
dicti Domini Regis ad pacem in locum præ-
dict, conservand. assign. Geor. Johnson de B.
in Com. N. prædict. yeom. venit in propr. per-
sona sua, & assumpsit pro seipso sub pœna
quadraginta librarum I. W. de C. in prædict.
Com. Laborer. ad tunc & ibidem in propr. per-
sona sua venit & manucepit pro prefato G. I.
sub pœna quadraginta librarum, quo quidem
summ. prædict. G. I. & I. W. recogn. se de-
bere dicto Domino Regi, & de terris ten-
tis bonis & catallis suis & utriusque eorum
ad opus & usum dicti Domini Regis & suc-
cessorum suorum fieri & levari si contigerit
ipsum G. I. in conditione sequente deficere &
inde legitimo modo convinci.

Recognizance taken at the Goale deli-
very or Sessions of Peace.

Nott. II. Md. quod ad general. goale delibe-
rationem Domini Regis tent. pro Com. N. præ-
dict. apud N. prædict. in Com. prædict. die Ve-
neris primo die Julii, anno regni Domini no-
stri Caroli secundi, &c. (ut supra) coram
G. D. uno Justic. dicti Domini Regis de Com.
Banco, & E. G. uno Justic. ejusdem Domini
Regis ad placita coram ipso Rege tenend.
assign. Justic. ipsius Domini Regis ad goal.
suam Com. sui prædict. de prisonibus in ea
existend. deliberand. assign. T. G. de O. in
Com. prædict. tanner. traditur in balliva I. G.
de O. prædict. lab. & N. S. de eisdem vill.
& Com. lab. usque vel prox. general. Session.
pæcis

partis prox. general. goal. deliberationem pro
Com. predict. tenend. Et adiunc & ibidem ad
respondend. eis omnibus & singulis quæ ex
parte dicti Domini Regis tunc & ibidem ver-
sus eum obijciuntur. Et ab inde non deced-
dend. sine licentia Cur. sub pœna partis prin-
cipal. xl l. & utriusque manucaptorum pre-
dictorum viginti librarum quas concesserunt
de bonis et Catallis terris et tentis suis fieri
et levari, si predict. T. G. defecerit in pre-
missis, &c.

Vel sic.

Ad respond. dicto Domino Regi pro suspi-
tione furationis panis per ipsum fieri suppl-
fit. Et ab inde non decedend etc. ut supra.

Note, That all Recognizances taken by
the Justices, must be ingrossed in parch-
ment, and subscribed with the Justice's
hand.

2. That in taking Informations and Exa-
minations, the parties examined are to
subscribe, and set their name or mark
thereunto: and the Justice is to certify the
same under his hand.

3. That all Recognizances once taken
must be certified to next Sessions or Goal
delivery, according to the Statute of 3 Hen-
ry, c. 1 & 2. & 3. Ph. & M. ca. 10. & 1. & 2.
P. & M. c. 13.

F I N I S.



The Table.

A.

Advice.

Page

The Authors advice to the Justices, 8

Ale-houses.

How they may be suppressed, 8

Ale-sellers to be bound in Recogn. 91

Convicted, how to be punished, 91. & 165

Selling Ale without licence, 91

Selling Ale at Fairs lawful, 92

Tiplers in Ale houses, who so to be accounted, *ibid.*

Convicted upon Stat. 10 Jac. their punishment what, 93

Who may Licence, and who suppress them, *ibid.*

Suffer any to continue tipling, 94

Whether only to be allowed in through-fair towns, 339

Abjuration.

Abjuration before two Justices, 24

The Table.

Page.

Arrest and Imprisonment.

Who may arrest a Felon, 29. and whether to carry him, <i>ibid.</i> when a Warrant may be granted, <i>ibid.</i>	
Arrest at another time,	46. 64
Who may acquiesce in arrest,	43
Where a Warrant must be shewn,	82

Account.

By Overseers of poor, and when, 118. 121	
They must give account to the Justices, <i>ibid.</i>	
By receivers of publick money,	206

Apprentices.

How to be put forth, 100. 170. 2. 325. 2	
Of what age they must be,	100
Not to be removed out of the parish, if poor or sick,	111
Unto what age they are to be bound,	111
His time must end before he be 24. years,	113
Woman bound until 21. or marry, <i>ibid.</i> 113	
Who compellable to take Apprentice, 111	
How they must be bound, 113. 114. 326. 2	
If one refuse to take an Apprentice, 113	
Fines to be levied towards binding Apprentices, 113. 114. 121. 2	
Who are not compellable to take Appr. 113	
Apprentice departing without leave, 114	
How Appr. may be discharged, 117. 118. 119	
Any under 21. may binde themselves, 117	

The Table.

	Page.
May be bound otherwise then by Indenture,	130
May not be compelled to be bound after 21 years,	131
No Apprentices but their sons,	133
Masters provided for Apprentices out of the same parish,	326, 2
Parents enticing their children from their Masters,	328, 2
Apprentices, if their Master dye, how settled,	336, 2

Archery.

Arrow-heads,	235, 2. & 254, 2. & 215
--------------	-------------------------

Accessary.

No accessary in Treason nor trespass,	236, 2
In what cases one may be accessary,	208, 2

Affize.

Of Bread and Beer,	247, 2
--------------------	--------

B.

Bail.

Who are not to be bailed,	165, 172
Bail and Mainprise,	171
Form of entring Bail,	172
Bailable before it appear whether the party be guilty,	173
Who are bailable,	173, 175
Party committed at the sureties request,	174
Wells must be bound to Goal delivery, <i>ibid.</i>	
Two Justices to take Bail,	176

The Table.

	Page
<i>Bakers.</i>	
Bread according to the price of corn,	189
Bread marked,	<i>ibid</i>
<i>Brewers.</i>	
Their measures,	185
Bakers and Brewers, how punishable,	185
Selling in unlicenced Alchouses,	234
Prices of Ale when to be set,	161
<i>By-Lawes.</i>	
Who may make them,	180
May make Rates upon a Parish,	180
<i>Bastardy.</i>	
Mother examined upon oath,	96
Where parties marry before an order made,	<i>ibid</i>
Parents perform Justices order or appeal,	96, 91
How and when the woman is to be punished,	91
Children born 11 daies after 40 weeks after fathers death,	<i>ibid</i>
Reputed father bound to good behaviour,	<i>ibid</i>
Orders herein must be by two Justices,	91
And if the parties disobey, how to proceed,	344
Husband not bound to keep his wives Bastard,	<i>ibid</i>
If the mother die, the childe must not be removed,	111
Woman got with childe, goes into another parish,	113, 115, 116, 330
Got with childe in her Masters service,	330
	<i>Bastard</i>

The Table.

	Page.
Bastard must be placed with the mother,	331,2
Delivered of a Bastard, and then becomes a vagrant in another parish,	<i>ibid.</i>
How Justices are to proceed against a re- puted father,	361, 348, 2, 344
Several Cases concerning Bastard children,	346, 347
How the mother is punishable,	361, 2
The Bastard must be chargeable to the pa- rish,	361
Where the childe is to be sent with the mo- ther to house of correction,	362

Barretor. 256

Beggars and Begging.

None may Beg,	104, 360, 2
Nor be licenced to beg,	119
But to go to Bath.	<i>ibid.</i>
To beg in their own parish is not vagrancy,	110
But to wander in the next and beg is,	<i>ibid.</i>

Bridewell.

Who are to be sent thither,	148
Master thereof how to be chosen,	163, 2
Justices have power to build or alter a house of correction,	164
Governor thereof, his duty.	<i>ibid.</i>

Bridges.

To be repaired by the County,	195, 171, 2
Only having lands next them will not charge a man,	196
Except it be <i>ratione tenure</i> ,	196

The Table.

Bridges lying in a Corporation,	Page 199
Lying in two Counties,	ibid.
Rates for High-waies and Bridges,	199
See High-waies.	
Butter and Cheefe.	
Buying and selling it,	161, 2, & 245, 2
Butchers.	235, 2
May not use trade of Tanner,	131, 231
Butts.	255, 2

C.

Concealments.	
Of any felony, &c. by a Jury,	193
Contempts.	
How punishable,	186, 2
Cerciorari.	
Justice may send the record <i>ex officio</i> ,	225
It must be delivered in open Sessions,	226
If variance be in it, and the record,	ibid.
Divers indired and Cerc. but for one,	ibid.
Cerc. dated before the indictment,	ibid.
Good formes of certificates upon Cerciorari- ries,	369
Cerciorary for forcible entr. not with sure- ties,	331
Calves.	
Not rearing a Calf for every 60 Sheep,	260, 2
Constables.	
And to do their duties, viz. Officers.	
Cards.	

The Table.

	Page.
<i>Cards.</i> Iron Cards,	240, 2
<i>Glosters.</i>	
Not having a Seal,	239, 2
Stretching cloth,	241, 2, & 150
Their abuses and deceits, how punishable,	151, 152, 154
Searchers, and their duties,	157, 156
<i>Cooper,</i>	241, 2
<i>Conspiracies.</i>	
In victuallers and Tradesmen,	224, 2
In Labourers, &c.	248, 2
<i>Coroner.</i>	
Not coming to view a dead body upon request,	222, 2
<i>Clerk of the Peace.</i>	
Bound to attend at Special Sessions,	2
His Fees,	229, 2
<i>Clerk of the Market.</i>	221, 2
Seal weights but once,	187
Take nothing for the second time,	188, 2
<i>Church.</i>	
Fighting there,	185, 2, 117, 2
<i>Charges at Quarter Sessions.</i>	188, 2
In carrying prisoners to Gaol,	177
<i>Cottages and Inmates.</i>	259, 2
What is an unlawful Cottage,	183, 2
Before whom inquirable,	184, 2
<i>Conviction, See Trial.</i>	

The Table.

D.

<i>Drunkards and Drunkenness.</i>	Page.
Justices warrant to levie distress.	95, 252, 2353, 2
<i>Dyers.</i>	
Using Logg-wood,	166, 212, 161, 2, 247, 2
Depraving Sacraments,	192, 2
<i>Deceit.</i>	
Where inditable,	213

E.

<i>Examinations of Felons,</i>	25
Circumstances observable in examinations.	26
Witnesses and their credit,	25
Evidence against the king not justified,	27
Persecutors bound over,	28
Suspicious persons bound over,	28
Who the Justice may binde, and who not,	28
<i>Egyptians.</i>	
Their goods how to be seised,	218
<i>Estreats of Fines,</i>	220
<i>Extortion, See Fees,</i>	227

The Table.

F.

Page.

<i>Forcible Entries, what,</i>	34, 40
Forcible detainer, what,	<i>ibid.</i>
What persons may commit it,	34
What acts will make it,	35, 36
Entry peaceably, and expell by force,	37
Force upon view of the Justice,	<i>ibid.</i>
By the Justice coming by accident,	<i>ibid.</i>
Where three years possession,	39
Remedy in forcible entries,	41, 216, 2
The force recorded, and how,	44
Recorded by the Justice, a good conviction,	<i>ibid.</i>
He may not do it in his own case,	46
Where he may commit the offenders,	<i>ibid.</i>
And where not,	<i>ibid.</i>
What force within the Stat. and what not,	47
Fine, by what Justice it must be set,	48, 49
Enquiry when, and by whom to be made,	49
In absence of the offenders,	<i>ibid.</i>
One Justice may view, and another inquire,	50
What Jurors must be returned,	<i>ibid.</i> 162
What Proces for want of appearance,	<i>ibid.</i>
Proceedings upon inquiry of a force,	363
Form of an Inquisition,	<i>ibid.</i>
Whether to be removed by Cerciorary without Sureties,	331
See more <i>Restitution, Traverse Supersedem.</i>	

The Table.

	Page.
<i>Fish, and Fish-daies,</i>	218
Fish destroyed,	110, 166
Taking Fish out of season,	261, 2
Overseers of Rivers,	110
<i>Forestallers.</i>	
How punishable, 168, and where,	162, 2 242, 2
<i>Forgers of Deeds,</i>	168, 214
<i>Fast-daies</i>	
Vittualler selling flesh,	234, 2
<i>Felonies.</i>	
Ignoramus for felony at Sessions, no dis. charge,	156, 2
What acts are felonies,	206, 2
To raze a Record,	196
Goaler compell to approve,	197
To acknowledge a Fine in <i>auter nosme</i> ,	198, 2
Multiplication of gold,	<i>ibid.</i>
Transportation of Sheep,	<i>ibid.</i>
Going abroad with a Plague.sore,	199, 2
Counterseit Egyptians,	<i>ibid.</i>
To harbour a Jesuite,	<i>ibid.</i>
Rogue banished and wandring again,	199, 3
Breaking prison,	<i>ibid.</i>
Wandring Souldiers and Mariners,	<i>ibid.</i>
Buggery,	203, 2
Carrying away a wife, <i>cum bonis viri</i> ,	203, 2
Carrying away a maid or widow,	<i>ibid.</i>
Marrying a second wife or husband,	<i>ibid.</i>
Robbing a Church,	204, 3
Robbing in <i>alta via</i> ,	<i>ibid.</i>
Burglary,	<i>ibid.</i>
Servant	

The Table.

	Page.
Servant imbezzling his Masters goods,	205,2
Burning houses,	<i>ibid.</i>
What is not felony,	206

Fresh Suite. See Hue and Cry.

Fairs. See Markets, 222,2

Fees.

Of Sheriffs upon an Arrest,	227,2
To the Goaler for a Commitment,	<i>ibid.</i>
Sheriffs Fee in Executions,	<i>ibid.</i>
Eschetors Fees,	<i>ibid.</i>
Coronors Fees,	<i>ibid.</i>
Justices Fees for inrolment,	<i>ibid.</i>
Fees of the Ordinary for Probats,	229,2
For Licence to eat flesh,	<i>ibid.</i>
For a Mortuary,	<i>ibid.</i>
Clerk of the Peace his Fees,	<i>ibid.</i>
Clerk of the Market his Fees,	230,2
Fees of the Justices Clerks,	<i>ibid.</i>
Toll gatherers their Fees,	<i>ibid.</i>
Searchers of Tile their Fees,	231,2
Taking above 4 <i>d.</i> for a Distress,	<i>ibid.</i>

Fines and Amercements.

Set <i>sedente Curia</i> ,	276,2
May be mitigated before conviction,	277,2
	160,328
Offender committed till payment,	<i>ibid.</i> 167
Or Fine estreated,	<i>ibid.</i> 167
Fines not to be mitigated after conviction,	319

The Table.

G.

<i>Guns.</i>	<i>Page.</i>
Shooting in a Hand-Gun,	167, 215, 255, 2
<i>Games.</i>	
Unlawful games, how punishable,	162, 215 257, 2
Greyhounds, and Setting dogs.	216
<i>Goalers.</i>	
Suffering prisoners to have too much liberty,	221, 2
<i>Goldsmiths.</i>	238

H.

<i>High-waies.</i>	<i>Page.</i>
How to be amended,	7
High-waies and Bridges,	251, 2
Supervisors to be chosen,	188
If neglected to be chosen,	193
Supervisors neglect their duties,	226, 2
Dales appointed for amendment,	<i>ibid.</i>
High-waies leading to Market-towns,	<i>ibid.</i>
What contributions towards amendment of them,	189
Hedges, &c. next the High-waies to be cut,	191
Overseers may dig in any ground,	192
Inclosures next High-waies,	194
No bushes nor dikes in High-waies,	<i>ibid.</i>
What breadth a High-way must be,	<i>ibid.</i>
	Parish

The Table

Page.

Parish chargeable with High-waies,	195
Where fines shall not go towards mending them,	<i>ibid.</i>
Rates for High-waies, 196, 182, and Bridges,	197
By whom to be made,	<i>ibid.</i>
Justice may present them upon view,	<i>ibid.</i>
To be repaired <i>ratione tenure aut prescriptionis</i> ,	308, 2
<i>Hunting and Hawking,</i>	167
Hunting with Grey-hounds and Ferrets,	167
In Parks,	<i>ibid.</i>
Hawking between July and August,	<i>ibid.</i>
Hunting in the night,	167, 2, 212, 2, 118
Hawking and hunting in eared corn,	217, 220
Killing Hares, Pheasants, &c.	256, 2, 216
<i>Hoflers.</i>	
Taking excessive rates for Horse-mear,	168, 241, 2
Making Horse-bread,	177, 2
Must take nothing for Litter,	241, 2
<i>Hares.</i>	
Killing Hares, what penalty,	216
<i>Hues and Cryes</i> , to be prosecuted,	217, 2
<i>Horses stoln and sold.</i>	
What a Justice may do after sale,	66
Sale in open market, who it bindes,	67, 187, 2
What must be observed in such sale,	68
Claim within six moneths,	69

House of Correction. See Bridewell.

Inn-keeper?

The Table.

I.

<i>Inn-keeper.</i>	Page.
Within the Stat. of Victuallers,	90
See <i>Victualler, Hostlers, & Ale-house-keepers.</i>	
<i>Inns, since 5. E. 6</i>	90

Jurors.

To be returned by none but the Sheriff,	2
Issues returned against a Juror not summoned,	219, 2

Justices Power. See Jurisdiction.

Their power concerning the poor,	119
If a Parish be not able,	121
May order to set poor on work,	ibid
One Justice may not binde another to peace,	78

Ingrossing. See Forestalling.

Informers.

Not prosecuting according to law,	163, 2
Circumstances to be observed,	ibid.
Informers prosecuting, after put out,	225, 2
Common Informers to be allowed upon record,	271, 2
Informations, in what County, &c.	283, 2

Imprisonment and Arrest.

What, & 163. Arrest what,	163
Every man may arrest a felon,	164
Who may be arrested, and who not,	ibid.
Arrest & deliver in <i>die dominico</i> ,	164
Arresting in the Church,	ibid.

Imprison-

The Table.

	Page.
Imprisonment without Baile, when,	165
Dyers using Log wood, to be imprisoned,	<i>ibid.</i>
Any that refuse to finde surties,	167
For Contempts,	166, 174
Destroyers of ponds, to be imprisoned,	166
For breach of peace,	167
For preservation of the peace,	168
Arrest and imprisonment for suspicion of felony,	170
Commitment only by a Judge, upon record,	<i>ibid.</i>
Murderers imprisoned a year and a day,	<i>ibid.</i>

Jurisdiction of the Justices. See Sessions.

Justices power in General Sessions,	156
Their power in Special Sessions,	174, 2
Power by Stat. to determine, and doth not say how,	15, 158, 2
What they may do out of Sessions,	887, 163, 2
Cannot deliver upon ignoramus for felony,	258
Power to inflict corporal punishments,	276, 2
Over what persons, and in what place they have power,	9
In forcible entries,	44
What they may do out of the County,	11, 12
They may command the posse Comitatus,	19

Inditements, and Presentments.

Where it lies for a deceit,	213, 2
For slanderous words,	<i>ibid.</i>
For selling deceitful wares,	235, 2
Inditement, what,	278, 2
Presentment, what,	<i>ibid.</i>

General

The Table.

	Page.
General rules concerning them,	279, 2
Who may be inditors,	280, 2
Who may be indited,	ibid.
Within what time indirements must be brought,	281, 2
In what place the offence must be said to be,	282, 2
For what cause an indirement lies,	284
and what not,	ibid.
In forcible entry, <i>vi & ar. & manu forti</i> ,	186, 2
Insufficient in felony, yet good in trespass,	287, 2
<i>Vi & armis</i> , where not necessary,	287, 2
<i>Contra pacem</i> necessary,	ibid.
The words, <i>in pacem Domini Regis</i> , omitted,	188, 2
<i>Percussit</i> , necessary in all killings except poyson,	289, 2, 304, 2
<i>De bonis parochianorum</i> ,	290, 2
<i>De bonis</i> , &c.	ibid.
Additions, and what are good, what not,	291, 2, 292, 2,
<i>Aliis dict.</i> 293, Certainty, &c.	ibid.
For the time how to be laid,	290
Time not necessary in negative indirements,	298, 2
Place how to be laid,	299
Stroke at one place, and death at another,	300, 2
Name and quality of the thing in which the offence is committed,	301, 2
The value and price,	ibid.

The Table.

	Page.
The description of the matter, and manner of the offence,	302
Stopping a High-way, and does not say with what,	305
Water-course stoppt by trees to annoy high-ways,	307
Annuzances in high-waies,	ibid.
To amend them, <i>ratione tenura</i> ,	ibid.
For coyning, inditement must say what money,	308
Uncertainty in Generals,	309
Against Accessaries,	310
Matter in the inditement that is not shewn to the Jury,	310
Inditements upon a Statute,	311
how they must be laid,	312
Inditement quash'd for several uncertain- ties,	314
For not administ. Sacrament,	316
Against an Hostler for excessive rates,	ibid.
In forcible entry, and did not say, <i>tunc exi- stentium</i> ,	317, 318, 319
Against a Pedler selling wares out of mar- ker,	318
Upon 6. Ric. 2. for ravishment,	320
Certifying inditements,	ibid.
What is sufficient, and what not,	321
Certificate by a Coronor,	ibid.
Certificate by a Steward,	ibid.
Presidents for Certificates by Justices of Peace,	369, 370
How an inditement may be voided,	323
If indited in a wrong name,	323

The Table.

	Page.
Want of addition tried for the same of- fence,	ibid.
<i>Autre foits convist.</i> and divers other causes which see in all,	323, 2.

L.

<i>Lords-day</i> , and prophanation thereof,	20
<i>Release.</i>	
Of Peace, form thereof,	89
By the Justice: By the party,	ibid.
<i>Labouers.</i>	
Artificers compelled to work in harvest,	133
That undertake work and then leave it,	168, 139
That go into another County,	143
<i>Licence.</i>	
To beg. See <i>Beggars and Begging.</i>	
Licence for Labourers,	211
For Servants to depart,	ibid.
For Alehouses. See <i>Alehouses.</i>	
<i>Libels.</i>	213
<i>Leather.</i>	
Searchers and Sealers of Leather,	225 2
Selling tanned Leather,	234, 2

Ministers.

The Table.

M.

Ministers.

Page.

Disturbing, how punishable, 22, 70, 192, 2

Minister arrested, 164. See *Arrests and Imprisonment*.

What proportion a Minister may be taxed, 178, 338, 2

Market Overt.

Sale of stolen goods, who it binds, 67

In what place open sale must be, *ibid.*

Marshalsey. See *Rates*.

Master and Servant.

Retaining another mans servant, 138

Master abuse his servant, *ibid.*

Servant retained generally and no time expressed, 137

Servant assault his Master, 139

how punishable, 176, 2

Servant put away shall have wages, 139

how recoverable, 140

Not to be put away but by order, 140, 141

May not be put away because sick or lame, *ibid.*

Servant departing out of service, 142

Woman servant that marries, cannot depart, 143

Offences against Stat. 5. Eliz. 4. how punishable, 143

Who may be compelled to serve, 131,

149, 2, 332, 2

In husbandry, *ibid.*

Women compelled to serve, *ibid.*

L 1 a

Woman

The Table.

	Page.
Wowan servant with childe, how put away,	333, 2, 347, 334

Mainprise. See Bail.

Miller.

His Tole-dish according to Standard,	183
His Toll, how much,	186, 2, 246, 2
He must not buy corn to sell,	<i>ibid.</i>

Money.

Crackt money not to be refused,	209
---------------------------------	-----

Murder, what, 200, 2

Murdering bastard childe,	201, 2
---------------------------	--------

Who are principals,	202, 2
---------------------	--------

Party must dye within a year,	<i>ibid.</i>
-------------------------------	--------------

Man-slaughter.

Where killing is justifiable,	201, 2
-------------------------------	--------

<i>Se defendendo & per in fortunum</i> , their forfeiture,	200, 201, 2,
--	--------------

Maim.

What, and how punishable,	210, 2
---------------------------	--------

<i>Musters,</i>	254, 2
-----------------	--------

N.

Night walkers.

How punishable,	33
-----------------	----

O.

<i>Overseers of Poor, what,</i>	98
Must provide house as well as victuals,	117
They	

The Table.

Page.

They may erect a Cottage,	117, 362, 2
By whom to be chosen,	119, 159
Church-wardens have equal authority,	99
They may make rates,	117
May charge one that brings poor into parish,	338, 2, 117
May make rates to binde apprentices,	118
See <i>Poor</i> .	

Officers.

Kings servant extraordinary may be Constable,	339, 2
Constable refuse to take his Oath,	337, 2,
Searchers of cloth, how made,	160
Constables, 160, how made, and how to be removed, <i>ibid.</i> his Oath,	214, 337
Constable neglecting his office,	161
Overseers of weights and measures,	<i>ibid.</i>
Overseers of Rivers,	<i>ibid.</i>
Treasurers of the County-stock,	<i>ibid.</i>
Governor of Bridewell,	<i>ibid.</i>
Collectors for the common Goal,	<i>ibid.</i>
Sheriffs their abuses in County Court,	162
And otherwise, how punishable,	<i>ibid.</i>
Searchers of Tiles,	<i>ibid.</i>
Overseers of High-waies, how punishable,	166
Officers refusing to account,	<i>ibid.</i>
Ordinary delay to prove Wills,	222
<i>Opinion.</i>	
Preach't about eating flesh,	194

The Table.

P.

<i>Parsons.</i>	<i>Page.</i>
And how to be taxed,	178, 338, 2
To the Poor,	<i>ibid.</i>

Peace and good behaviour.

Surety of peace, whar,	69
For what cause it may be required,	70
When an Oath is necessary before granting it,	70
Wife against her husband may have it,	71
It may be taken by one Justice,	78
One Justice requires it of another,	<i>ibid.</i>
Where it must be by two Justices,	<i>ibid.</i>
Who may demand it,	79
Against whom it may be had,	81
The manner of granting it,	<i>ibid.</i>
The manner of serving such Warrants,	<i>ibid.</i>
Peace or good behaviour released,	84, 88
What is a breach of Peace,	85
What is a breach of good behaviour,	86, 87
Form of a Release of peace,	89
By the Justice, <i>ibid.</i> and by the party, <i>ibid.</i>	
Breakers of Peace, how punishable,	30
Warrants <i>ex officio</i> , to prevent breach of Peace,	29
What one Justice may do in preservation of it,	<i>ibid.</i>

Possession.

What is said to be a good continuance three years,	55, 56.
--	---------

Poor and Rogues.

What poor are to be provided for,	103
And	

The Table.

	Page.
And what not,	104
Build a Cottage upon the waste,	117
Poor man over burdened with children,	104
Poor that wants work,	<i>ibid.</i>
None may beg,	119
Poor to be relieved by their friends,	350, 351

Settlement of Poor.

A traveller dies and leaves a childe,	105, 113
Poor to be settled, by whom,	105
Settlement by fraud or compulsion,	106
What is a good settlement,	107
Once settled, not to be removed,	<i>ibid.</i>
To what Officers they are to be upon removal,	108
May be sent back where not duly sent,	<i>ibid.</i>
None sent out of his parish but a vagrant,	<i>ibid.</i> 100
Woman got with childe goes out of that parish,	113, 115, 116
Woman having a young childe is hanged,	<i>ibid.</i>
Woman delivered in one parish goes into another,	114, 348
Dwell in one town, and work in another,	115
Poor which refuse to work, how punishable,	119
If a man be thrust out of a parish against Law,	335, 2
Nurse children and Scholars, no settlement,	338, 2

See Overseers of Poor.

Pound.

Common Pound,	231, 2
L 1 4	Pro-

The Table.

	Page.
<i>Proclamation,</i>	
Sessions cannot deliver a felon by Proclamation,	337, 258
<i>Posse Comitatus.</i>	
Justice of Peace may raise it,	15
<i>Perjury.</i>	
How punishable,	170
<i>Prophecies.</i>	
How punishable,	ibid. 216, 2
<i>Parks.</i>	
Trespases in Parks, how punishable,	
<i>Prisoners.</i>	
Collectors for prisoners,	227, 2
Their charges in going to the Goal,	177, 209, 183
How the Goaler is to keep him,	ibid.
What time to continue where commitment is indefinite,	ibid.
Prisoners in the Marshalsey, their rates,	168, 2
Where the Law appoints a prison,	176
<i>Plague,</i>	214
<i>Pewter and Brass</i>	
Two Searchers to be made,	162, 2
<i>Petty Treason, what,</i>	200, 2
To smite a Judge,	197
<i>Petty lacy,</i>	205
<i>Purveyors,</i>	227, 2
<i>Presentments.</i>	
What Officers ought to make presentment,	270, 2
Presentments without the Grand Jury,	ibid.
Justice may present High-waies,	271, 2
See more <i>Inditements.</i>	

Process

The Table.

	Process.	Page.
What Process upon Inditements,		272,2
None upon a Recognizance,		274,2
Against Recusants,		204, 272,2
Cap. ut l. awarded by Justices of Peace,		205
The grounds of Process,		274,2

R.

Restitution.

In force must be by the same Justice,	51
Must be to the person himself,	52,58
It may be granted notwithstanding traverse,	ibid. 58
To whom it must be made,	54
How oft it may be made,	55
But once,	ibid.
For what causes restitution may be stayed,	57
By Cerciorary, &c.	ibid.
Restitution of stoln goods,	181,2

Riots.

What, 60, how punishable,	167
If Justice neglect to suppress them,	230
Riot in view of the Justices,	64
Who may be guilty of a Riot,	61
How a Riot is to be suppressed,	230
Riotors escape cannot be arrested at another time,	65
Not to be committed before a record made,	65

Traverse

	Page.
Traverse not allowed in Riots,	65
<i>Recognizance.</i>	
What to be observed in taking a Recognizance,	83
Upon a Supplicavit,	<i>ibid.</i>
What the Condition ought to be,	<i>ibid.</i>
No time expressed for appearance,	<i>ibid.</i> 89
Where it must be certified,	84
If not certified, yet party must appear,	84
If it be broken, a <i>Scire fac.</i> not an Indictment,	86
How it may be discharged,	88
Where our Justices may take it,	210
Condition for good abearing,	166, 2
One bound for 7 years, how discharged,	165, 2, 178
Where the Justice may discharge it,	88
How and by whom it may be released,	84
	88, 166, 165
Recognizance of Ale-sellers,	91
Recognizance for felony must be certified at Goal delivery,	230
During life bound to the peace,	<i>ibid.</i>
Bound without any day limited,	165, 2

Retaining Servants.

By retainer he is presently a servant in law,	137
How Apprentice is to be retaine,	136
How a Servant is to be retained,	<i>ibid.</i>
None hire for less then a year in divers Trades,	<i>ibid.</i>

See Masters and Servants.

Refusants,

The Table.

Page.

Recusants.

Refusing to come to Church,	169
Using Beads, Pictures,	190, 2
Sending children beyond Sea,	ibid.
Popish books to be burnt,	ibid. 191, 2
Hearing or saying Masse,	ibid.
Harbouring a Recusant in his house,	191, 2
retaining such for servants,	ibid.
Extolling forein power,	195, 2

Rates.

Where the tenant is to be charged,	180
Rates for the Marshalsey,	181, when to
be set,	167, 2
For maimed Souldiers,	167, 2, and when to
be set,	ibid.
Upon other parishes for poor,	ibid.
For a robbery upon Stat. d' Hue and cry,	ibid.
Upon Beer-brewers,	182
For Bridges,	ibid. 196
For carrying prisoners to Goale,	177, 183
For prisoners in common Goale,	167
For the poor,	ibid. 332, 2
Relief for over rates,	169, 2
Rates for them that have the plague,	ibid.
For pensions of Souldiers,	ibid.
Rates for the Countrey Stock,	333, 2

Record.

Of the Justices not traversable,	153
Justice keep Record by him,	220

Rape.

203

Rescues.

208, 2

Re-

The Table.

Page

Regrating. See Forestalling.
Rogues. See Vagrants.

S.

Sacraments.

Depraving the Sacraments, 23

Swearing and Cursing.

How punished, and penalty, 12

Sewers.

The old Common good for a year, 211

Superfedeas.

How to be obtained, 281

What is a good Superfedeas, 220

Superfedeas not delivered by the party, 274, 2

Where the party appears, not to pray allowance, *ibid.*

Superfedeas in Forcible entries by whom granted, 53

It discharges appearance, 84, 85

Servants. See Masters and Servants.

Suits.

Suits between parties determined by the Justice, 185, 2

Stocks and Pillory. 231, 2

Sessions.

General Sessions, what, 149, 2

Special Sessions not held for the whole County, 149, 2, 263, 2

Statute

The Table.

	Page.
Statute Sessions,	150,2
At what time General Sessions to be held,	151,2
Sessions for Labourers twice a year,	<i>ibid.</i>
Special Sessions at any time,	152,2
Proceedings there,	5
Two Justices & Quorum to keep General Sessions,	153,2
Special Sessions by one Justice,	154,2
Middle not with Felonies,	137,2
At Sessions in General, it may be at any Sessions,	158,2, 176,2
What offences they may try,	156. See <i>Trial.</i>
Justices power at Special Sessions,	174,2
They have no Commission of Goale delivery,	156,2
Stat. appoints them to determine, and does not say where,	158,2
Officers made at Sessions, punished there,	163,2
What may be done out of Sessions,	187,2
Justices power in trespasses,	208
Cannot deliver a prisoner upon <i>ignoramus</i> for felony,	258, 337,2
Sessions Special, and summons thereon,	2, 5
<i>Supplicavit.</i>	221
By whom it must be executed,	<i>ibid.</i>
No return made till <i>Cerciorary</i> ,	<i>ibid.</i>
<i>Search.</i>	
Where the Justice may give warrant to do it,	29

The Table.

T.

<i>Taxes.</i>	<i>See Rates.</i>	<i>Page.</i>
<i>Traverse.</i>		
Tendred, stays restitution,		53, 58
Presentment by a Justice of Peace not traversable,		197
Traverse not allowed in Riots,		65
Record by a Justice not Traversable.		153
<i>Toll.</i>		
Where Toll is requisite to alter property,		67
Millers Toll, what it is,		246, 2
<i>Trade.</i>		
Who may use a Trade,		129
Tradesmen,		232, 2
What Trades not within the Statute,		129,
		231, 2
Husband dies, wife cannot use his Trade,		130
Brought up 7 years but not bound by Indenture,		<i>ibid.</i>
Butcher may not be a Tanner,		131, 232, 2
Nor a Currier a Cordwayner,		<i>ibid.</i>
<i>Testimonial.</i>		
Servant retained without a Testimonial,		137
<i>Transportation.</i>		
Of any Fullers-earth, Clay, &c.		207, 245, 2
<i>Treasurers.</i>		
Of the County Stock, how chosen,		262, 2
Of the Kings Bench,		227, 2

The Table.

<i>Treason.</i>	<i>Page.</i>
Enquirable only at Scissions,	194,2
To extol foreign power,	195,2
To use the Popes Bull,	<i>ibid.</i>
To be ordained at Rome,	196,2

<i>Trial and Conviction.</i>	
Where trial is left to Justices discretion,	269,2, 264,2
Enquire and determine, but say not how,	263,2
Where they determine, and others enquire,	<i>ibid.</i>
Determine and set fines at discretion,	265,2
Determine as well by presentment as by examination,	<i>ibid.</i>
They may inflict any corporal Punishment,	<i>ibid.</i>
punishment according to discretion,	266,2
Enquire by oath of two men,	<i>ibid.</i>
Enquire by twelve men & make Proces,	267,2
One may not take an Inquisition,	<i>ibid.</i>
Where trial by witnesses there must be two,	268,2
Where trial must be by Jury,	<i>ibid.</i>
Where no way of trial is directed,	269,2
Trial of offenders divers waies,	227,228,17
<i>Tanners.</i>	235,2, 236,2

V.

<i>Vagrants and Rogues.</i>	
What, 122, incorrigible,	126

The Table.

	Page.
How to be punished and sent away,	108,
	109, 114
Where to be imprisoned,	170
Wife to be sent to her husband,	109
Any above seven years old may be Rogues,	ibid.
If under seven years, not,	110, 112
To wander into the next Parish and beg, is a Vagrant,	110
Justices power concerning Rogues,	126
Children to be sent to their parents,	111
A Nurse-child to be with the mother,	112
Afterwards where it was born,	ibid.
Vagrants only to be sent to place of birth,	116, 125
Any removed contrary to law may be sent back,	117, 108
A Rogue to be sent to place of birth,	336, 2

Unlawful Assemblies. See Riot.

<i>Usury.</i>	182, 2, 247, 2
In Brokers, <i>ibid.</i> not punishable at Sessions,	247, 2

Viſnaller.

Selling unwholsome flesh,	234, 2
Buying Deer, Hares, &c. to sell again, <i>ibid.</i>	
Selling at unreasonable rates,	234, 2
Tradesmen conspiring to do so,	186, 2

Warrants.

The Table

Warrant to arrest, when it may be granted,	29
Warrant must be clear and not ambiguous,	29
No blank Warrants,	29
They must be in the Kings Name,	199
And when in the Justices Name,	199
How to be directed, and to whom,	ibid.
It must specify the cause,	102
Warrant or Mittimus,	203
Seal not necessary,	ibid.
Warrant of Commitment and Mittimus,	203
diversity,	203
Warrant before inditement found,	203
Warrant upon a presentment,	204
In what cases Justices may send Warrants,	204
Where one Justice may send a Warrant,	205
Warrant upon complaint without oath,	206
Wines.	
Prices of Wines by whom assessed,	184, 2
	187, 2
Watch and Ward.	
Watch in Walled Towns,	218, 2
Watch and Ward,	ibid.
Who compellable to watch,	31
M m	Con-

The Table.

	Page.
Constable is to order it,	31
The neglect to be punished,	<i>ibid.</i>
The duty of Watchmen,	32
Justices of Peace may appoint it.	32
Warding in the day time of great use,	339, 2

Wages.

Of Justices at Sessions, 131
Upon sitting upon penal Statutes, *ibid.*
Where the King is to bear their charge, 232
Wages for Servants, 232

FINIS.

A Table to the Prest- dents of Inditements.

<i>Ale.</i>	<i>Page.</i>
Selling without Licence,	373
Selling less then measure,	<i>ibid.</i>
Alehouse-keeper, suffering ill rule,	374
Continuing above an hour in an Ale-house,	376
Harbouring idle persons,	376

<i>Aff. ult.</i>	
Riot and Battery,	378
Affaule and Battery,	383
Affaule in the Church,	<i>ibid.</i>

• *Apprentice misused by his Master,* 384

<i>Barretor.</i>	
Common Barretor,	384
Badging without Licence,	385
Forcible entry and detainers,	367
Peaceable entry and detaining with force,	366
Forcible entry upon Tenant for years,	368
M m 2	In-

The Table.

	Page.
Inducement for a force upon Justices view,	369
<i>Felony.</i>	
For stealing goods,	372
<i>Forestalling.</i>	374
<i>High-waies.</i>	
Against Inhabitants for not repairing them,	382
<i>Hofler.</i>	
Selling Hay at an unreasonable rate,	315
<i>Ingrossing,</i>	375
Against a Pedler selling wares out of Market,	318
<i>Minister.</i>	
Minister disturbing,	377
Minister refuse to administer the Sacrament,	378
Refusing to bury the dead,	379
Refusing to use Book of Common-prayer,	385

Ex. J. M.

ERRA-



ERRATA'S.

PAge 174. lin. 5. for or read of, p. 175. l. 1. f. executions r. examinations, p. 196. l. 9. f. known r. done, p. 224. l. ult. f. 1 Cro. r. 12 Coke, p. 205. l. 3. f. 1 Cro. r. 12 Coke, p. 221. l. 11. f. upper r. Kings, p. 231. l. 11. f. State r. King, p. 371. l. 18. f. ordinati r. onerati, p. 378. l. 18. f. desparabat. r. desparabatur, p. 374. l. 6. f. permisit r. adtunc & ibidem in domo suo permisit.

An Advertisement.

The Reader is desired to take notice, that the second Part of this Book, by the Printers mistake, begins with pag. 249. whereas it should have been continued with immediate successive numbers from the first; therefore in the Table where this figure of 2 is put after the number, it signifies the Second Part.

